Supreme Court of the United States.

No. 2 Original.—October Term, 1906.

Commonwealth of Virginia
vs.
State of West Virginia. } In Equity.

[May 27, 1907.]

This is a bill filed, on leave, February 26, 1906, by the Commonwealth of Virginia against the State of West Virginia.

The bill averred that—

"On the first day of January, 1861, complainant was indebted in about the sum of $33,000,000 upon obligations and contracts made in connection with the construction of works of internal improvement throughout her then territory. By far the greater part of this indebtedness was shown by her bonds and other evidences of debt, given for the large sums of money which she from time to time had borrowed and used for the above purpose; but a portion of her liabilities though arising under contracts made before that date, had not then been covered by bonds issued for their payment.

"In addition to the above liability to the general public, there was a large indebtedness evidenced by her bonds and other liabilities held by and due to the Commissioners of the Sinking Fund and the Literary Fund of the State, as created under her laws amounting, the former to $1,462,993.00, and the latter to $1,543,669.05 as of the same date.

"The official reports and records showing the exact character and amounts of the public debt thus contracted and how the same was created, are referred to, and will be produced upon a hearing of the case.

"(2) That portion of the territory embraced in what constitutes the present territorial limits of Virginia was prior to that date devoted mainly to agriculture, and to some extent to grazing and manufacturing, which afforded its chief sources of revenue, while that portion included in what now constitutes the State of West Virginia had vast potentialities of wealth and revenue in the undeveloped stores of minerals and timber, which had been known for many years prior to the date named, and their prospective values, if made accessible to the markets of the country, were understood to be well nigh beyond computation. It was to hasten and facilitate the development of these sources of wealth and revenue by the construction of graded roads, bridges, canals and railways, extending through the State from tidewater towards the Ohio River, that the Commonwealth of Virginia, in the first quarter of the Nineteenth Century, entered upon a system of public internal improvements, which it was contemplated should include the entire territory of the State, and embraced in its design the construction of public works adapted, not to the needs of any one portion of the State alone, but of the entire State, as a unit of

interest. The larger part of these works were constructed East of the Appalachian range, as leading up to the undeveloped territory West thereof, but a very considerable portion of them were, at an expense of several millions of dollars, constructed West of said range within the territory now included in the State of West Virginia; and the completion of some of the main lines of improvement beyond the said range and through to the Ohio River, since the first day of January, 1861, has increased to a very great and material extent the values of real estate, including coal and timber, in the said territory now included in West Virginia, thus carrying into effect the original scheme of improvement, which could not have been done had not the lines East of said range been first constructed; and your Oratrix believes and avers that the property values within the limits of West Virginia have been enormously enhanced in a large measure by reason of these improvements. The money appropriated to the payment of the annually accruing interest on the said debt, prior to January 1, 1861, and to the formation of the Sinking Fund for the ultimate redemption thereof, was derived from taxes imposed upon the property subject to taxation throughout the entire State. The first of this indebtedness to be contracted was a small amount borrowed by the State in the year 1820 and the debt was thereafter from time to time continued and increased by renewals and new loans until it reached the amount above stated in 1861.

"(3) The Commonwealth of Virginia was induced to enter upon the construction of this general system of internal improvement, in a very large measure for the purpose of developing the aforesaid resources of the western portion of the State, now constituting the State of West Virginia, thereby ameliorating the condition of her citizens residing therein; and it was with this view that she took upon herself the burden of the public debt for which her bonds were issued, without which debt such improvements could not have been undertaken. In corroboration of this view it will appear from an inspection of the legislative records of the State, where the vote carrying the appropriations for such public improvements was recorded, that in nearly every instance a majority of those members of the House and Senate of the original State, who then represented the counties now composing West Virginia, voted for such appropriations. Indeed it appears from those records that a great majority of the Acts of the legislature of Virginia under which said indebtedness was created, would have failed of their passage, had the representatives from the counties embraced in what is now West Virginia opposed their enactment, and that a very large proportion of said indebtedness was actually contracted over the votes of a majority of the representatives from the counties and cities embraced in the limits of the present State of Virginia. This will be found to be true, not only in the legislature for one single session, but in the legislatures for many successive years, thus showing it to have been a fixed policy of the people in that portion of the State now constituting West Virginia to participate in, support and carry out this general plan of internal improvements in the State."

"4. The development of this system of public improvements thus entered upon was, from its character and extent, necessarily progressive, and the same extended with the general growth and increasing needs of the State, and was incomplete, as above stated, in 1861, though a very con-

siderable portion of such improvements had, prior to that time, been constructed as above stated, in the territory now constituting West Virginia, in order to meet the needs of the people of that portion of the State for their local purposes. As early as the year 1816 a Board of Public Works was created by law for the State, the members of which were elected by the voters of the State at large, and this Board had in charge the construction and supervision of all the works of public improvement in this State. The annual reports of this Board will be referred to for information as to the character, extent, cost and location of the public works and internal improvements constructed in the State prior to January 1st, 1861. The amounts expended upon the construction of these works in what is now West Virginia can only be accurately ascertained by an examination of the numerous entries in the records of this Board extending through a number of years and showing such expenditures as made from time to time."

"5. On the 17th of April, 1861, the people of Virginia, in general convention assembled, adopted an ordinance by which it was intended to withdraw Virginia from the Union of the States. From this action a considerable portion of the people of Virginia dissented, and organized a separate government which was known and recognized by the government of the United States as the 'Restored State of Virginia,' and will be hereafter referred to in this bill as the 'Restored State.'"

"6. On the 20th day of August, 1861, the Restored State of Virginia, in convention assembled, in the city of Wheeling, Virginia, adopted an ordinance to 'provide for the formation of a new State out of the portion of the territory of this State;' Section 9 of which ordinance was as follows, to-wit:

'9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the Treasury of the Commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia.'

"7. On the 31st day of December, 1862, an Act was passed by the 37th Congress of the United States providing that the new State thus formed in pursuance of the ordinances of the Wheeling convention above referred to, should, upon certain conditions, be admitted into the Union by the name of West Virginia, with a constitution which had theretofore been adopted for the new State by the people thereof, such conditions being that a change should be made in such proposed constitution in regard to the liberation of slaves therein; and it was provided by this Act of Congress that whenever the President of the United States should issue his proclamation stating the fact that such change had been made and ratified, thereupon the Act admitting the new State into the Union should take effect sixty days after the date of such proclamation. Such proclamation declaring these conditions to have been complied with was duly made

by President Lincoln on April 20th, 1863, and West Virginia, in conformity therewith and by the operation of said Act of Congress, was admitted into the Union as a State on the 20th day of June, 1863; and thereupon the State of West Virginia became fully organized, and each of its departments of government commenced operation on the date last named."

"8. Pending the admission of the State of West Virginia to the Union the General Assembly of the Restored State of Virginia passed February 3, 1863, the following Act:

'That all property, real, personal and mixed, owned by, or appertaining to this state, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this state, or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of this state, to the extent of the interest and estate of this state therein; and shall also include the interest of this state, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this state, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state.'

'That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this state, provided that no such property, stocks and credits shall have been obtained since the reorganization of the state government.'"

Complainant charged "that the property which was by the operation of this Act appropriated and transferred from the State of Virginia to the State of West Virginia, and which was subsequently received and enjoyed by the State of West Virginia, consisted of a number of items, and the value of it amounted, in the aggregate, to several millions of dollars, the exact amount your Oratrix is unable at this time more definitely to ascertain and state. That of the bank stocks alone, which were transferred under the operation of this Act, the State of West Virginia realized and received into her Treasury from the sale thereof about Six Hundred Thousand Dollars; and that no part of the property so received by West Virginia had been obtained by Virginia since April, 1861."

"9. And by a further Act of the General Assembly of the Restored State of Virginia passed on the next day, February 4th, 1863, it was enacted:

'1. That the sum of One Hundred and Fifty Thousand Dollars be, and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.

'2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States: provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all the moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this State.'

"And this last named sum of One Hundred and Fifty Thousand Dollars, together with other sums belonging to the State of Virginia, were turned over to and received or collected by the new State of West Virginia after its formation as aforesaid."

"10. The Constitution of the State of West Virginia, which became operative and was in force when she was admitted into the Union, contained the following provisions:

"By Section 5 of Article VIII. of said Constitution it was provided:

'5. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability to the State, to suppress insurrection, repel invasion, or defend the State in time of War.'

"And by section 7 of Article VIII. it was provided:

'7. The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank.'

"And by section 8 of Article VIII. it was provided:

'8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years.'

"At the time the Constitution containing these provisions was adopted, West Virginia did not owe, and could not have owed, any 'public debt' or 'previous liability,' except for her just, contributive proportion of the public debt of the original State of Virginia, and for the money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State of Virginia above set forth. By the provisions of Section 8 of Article VIII., above cited, she expressly assumed her equitable proportion of the debt of the original State as it existed prior to the first day of January, 1861. By Section 5 of the same Article VIII., above set forth, her Constitution forbade the creation of any debt 'except to meet casual deficits in the revenue, to redeem a previous liability of the State,' &c., and there was not and could not have been any such 'previous liability,' except her portion of the debt of the original State, and her liability for the money and property of the original State which had been transferred

to and received by her under the Acts of the General Assembly of the Restored State. And Section 7 of the same Article of her Constitution, above cited, authorized a sale of the stocks owned by the State, in banks and other corporations, the proceeds to be applied to the liquidation of the public debt; and she had no such stocks, except those acquired, as above stated, from the original State. This section of her constitution also expressly required the proceeds of such sale to be applied to her public debt, which public debt could only have been her proportion of that of the original State of Virginia, and her liability for the money and property of the original State which had been transferred to her."

"11. After the year 1865 and prior to the year 1872 attempts were made at different times by the public authorities of both the Commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportions of the common liability resting upon them for the public debt of Virginia, contracted prior to January 1st, 1861; but all such attempts proved ineffectual and vain, and no accounting or settlement of any kind was ever had between the two States in regard to this debt.

"12. The efforts looking to a settlement by the concurrent action of the two States having proved abortive, and your Oratrix being anxious to adjust the portion of the common debt which it was right that she should assume and pay, upon terms just and equitable alike to the public creditors and to West Virginia, made several efforts to effect such a settlement.

"The first of these was made by the General Assembly which was chosen at the close of the period of 'destruction and reconstruction,' which, following closely upon the period of disastrous war, had inflicted upon her people injuries and losses, the harmful effects of which were then by no means realized.

"The purpose of the representatives of the Commonwealth, then just emerging from conditions which had impoverished her people and paralyzed their productive energies, to assume and pay to the utmost every dollar which her most exacting creditor could demand of her, was expressed in the Act of her General Assembly, approved March 30, 1871.

"By the terms of settlement embodied in this Act, your Oratrix undertook to give her obligations bearing 6 % interest for two-thirds of the principal, and for two-thirds of the past due interest, and also for two-thirds of the interest on that accrued interest, which accrued interest to the extent of nearly $8,000,000, had been funded after the War in new bonds of Virginia, thus capitalizing at 6 % not only the interest, but interest upon that interest.

"It was soon apparent that Virginia had by this measure assumed a heavier burden than she was able to bear, and so other plans for the settlement of the State debt were attempted by the Acts of the General Assembly of the Commonwealth approved March 28, 1879, and February 14, 1882, until at length a final and satisfactory settlement of the portion of the debt of the original State which Virginia should assume and pay was definitely concluded by the Act of February 20, 1892. Your Oratrix will file copies of each of the Acts of her General Assembly herein mentioned as exhibits to this bill, and to be read as part hereof.

"13. As farther indicating the great burden which your Oratrix, notwithstanding the disaster and loss above referred to, has assumed and met on account of the common debt of the undivided State, she shows your

Honors that, since January 1st, 1861, she has actually paid off, retired and discharged, or assumed and given her new outstanding obligations for the aggregate sum of over Seventy-one Million Dollars, as will more particularly appear from a statement thereof filed as an exhibit herewith and hereinafter referred to as Exhibit Number 7.

"It is proper in this connection to call attention to the fact that, while your Oratrix has made this large contribution toward the settlement of the common debt, West Virginia has not paid one dollar thereof; and although in the early years of her history she repeatedly conceded that there was some portion of that debt which should equitably be borne by her, her properly constituted authorities have for a number of years refused to recognize that any liability whatever rested upon her, on that account, and have declined even to enter into an accounting or to treat with your Oratrix in reference thereto.

"It would seem from the above statement that Virginia has already done as much under all the circumstances as she could be fairly expected to do towards paying off the common public debt of the old State. Such was the view and purpose of the General Assembly in the several Acts above recited.

"A question may be raised as to whether such was the effect of the language used in the Act of March 30, 1871, with respect to the certificates issued thereunder; but the great mass of the creditors entitled to whatever may be due upon the unfunded obligations of the undivided State, have in effect agreed, as will be hereinafter shown, to waive any such question, and to accept the adjudication of this Court in this cause against West Virginia in full discharge of all their claims, thus giving that effect to the Act of March 30, 1871, which it was the purpose of your Oratrix that it should have.

"14. By each of the Acts for the settlement of her debt above recited, it was provided that the bonds of undivided Virginia so far as not funded in the new obligations given by your Oratrix, should be surrendered to and held by your Oratrix, who either by the express terms of the settlement provided for by said Acts, or as a just and equitable consequence therefrom, received and holds said original bonds so far as unfunded, in trust for the creditor who deposited the same with her, or his assigns; and certificates to this effect were given by your Oratrix to each creditor whose old Virginia bond was so surrendered to her.

"Having as an essential part of the contract for the adjustment of the common debt of the original State entered into this fiduciary relation in reference to these bonds, it became her obligation of duty to the creditors who had confided their securities to her keeping, as well as to her own people, whose credit and fair name required that these obligations of the old State should be fairly and honorably adjusted, to do all in her power to bring about a determination of West Virginia's just liability in respect thereto, and if possible the recognition and settlement of the same by that State.

"Only after exhausting every means of amicable negotiation, and having her overtures to that end repeatedly refused, and as a last resort, has your Oratrix been constrained at length reluctantly to apply to this, the only tribunal which can afford relief, for an adjudication and determina-

tion of this question, of such vast importance to your Oratrix and to all of her people."

"15. All of the bonds and obligations and other evidences of the indebtedness of the original State of Virginia outstanding and contracted on January 1, 1861, as stated in paragraph 1 of this bill, except a comparatively insignificant sum, not amounting to one per cent of the aggregate of those liabilities, have been taken up and are now actually held by your Oratrix, and she has the right to call upon West Virginia for a settlement with respect thereto. They are too numerous and involve too great a number of transactions running through many years, for it to be practicable to exhibit them here in detail, but the original bonds and other evidences of indebtedness so paid off or retired and now held by your Oratrix, will, when it shall be proper to do so, be exhibited to the Master, who shall take the accounts hereinafter prayed for."

"16. Of the evidences of indebtedness representing principal and interest of the liabilities of Virginia contracted before her dismemberment, those so paid off or retired by your Oratrix and now held by her in her own right, exclusive of the amounts represented by the certificates issued under the funding Acts aforesaid, amount in the aggregate, including the interest to be fairly computed thereon to this date, to a very large sum, considerably in excess of $25,000,000, by far the greater part of it being now, of course, on account of the interest computed thereon, at the rate of 6 % per annum, the then legal rate in both States.

"For all of these obligations taken up and payments made on account of the common debt, your Oratrix has in her own right, a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor."

"17. In addition to the above bonds there were outstanding on the 1st day of January, 1861, certain obligations of the State of Virginia as guarantor upon some of the securities issued by internal improvement companies, which your Oratrix was called upon to provide for and settle. They were not comparatively of very large amount, however, and the questions involved in connection therewith can be stated and settled in the account hereinafter prayed for to be taken between the two states; and in such accounts your Oratrix will also ask to have included all such items of debit against the State of West Virginia on account of the property and moneys of the original State which were received or appropriated by West Virginia which may not have been specifically or accurately stated herein. These items of accounting between the two States are so numerous and varied and extend throughout a period of so many years' duration that it is impossible from the nature of the case to state all of them in this bill; and the account between the two States can only be taken and settled, and the balance due your Oratrix thereon ascertained, under the supervision of a Court of Equity."

"18. Your Oratrix charges that the liability of the State of West Virginia, for a just and equitable proportion of the public debt of Virginia, as of the time when the State of West Virginia was created, rests upon the following among many grounds which might be indicated here:

"First. The area of the territory now known as the State of West Virginia formed about one-third of the territory of the Commonwealth of Virginia when this public debt was created, and its population included

about one-third of that of the original State at the time of its dismemberment. And the State of West Virginia did, by the acquisition and appropriation of such territory, with the population thereof, assume therewith liability for a just and equitable proportion of the public debt created prior to the partition of such territory.

"Second. The liability of West Virginia for a just proportion of the public debt of the Commonwealth of Virginia, as it existed prior to the creation and erection of the State of West Virginia, forms part of her very political existence, and is an essential constituent of her fundamental law as shown in the said ordinance adopted at Wheeling on the 20th day of August, 1861, in which the method of ascertaining her liability on account of said debt is prescribed. And this liability is imbedded in the Constitution under which she was admitted as a State into the Federal Union, and was one of the conditions under which she was created a State and admitted into the Union.

"Third. The State of West Virginia has further, by the repeated enactments and joint resolution of her legislature, recognized her liability for a just proportion of this debt.

"Fourth. The State of West Virginia has, since her creation as a State, received from the State of Virginia real and personal property, amounting in value to many millions of dollars, and held and enjoyed the same, but upon expressed condition that she should duly account for the same in a settlement thereafter to be had between her and the Commonwealth of Virginia.

"Fifth. While the transfer of this property, real and personal, and also of certain moneys of the Commonwealth of Virginia, purport to have been made to the State of West Virginia by the Act of 'The Restored Government of Virginia,' there were in fact represented in said 'Restored Government' and in the legislature thereof no other people and no other territory than that which then, as now, constitute the State of West Virginia.

"19. The General Assembly of Virginia being anxious to effect a settlement of the portion of the common debt of the undivided State which remained unadjusted, and if possible to bring this about with the friendly co-operation and concurrence of West Virginia, adopted: 'A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by the State of West Virginia, and for the application of whatever may be received from the State of West Virginia to the payment of those found to be entitled to the same,' approved March 6, 1894. A copy of this resolution will be hereinafter shown as an exhibit to this bill, to be read as a part thereof.

"Under this resolution a commission of seven members was appointed for the purpose of carrying into effect the objects expressed therein.

"The efforts made by this Commission, acting under the above resolution to bring about a settlement with West Virginia having proved ineffectual, and the overture which the Commission, with the active co-operation of the Honorable Charles T. O'Ferral, the then governor of the Commonwealth made to the authorities of West Virginia for the purpose of bringing about a friendly adjustment having been declined, the General Assembly of Virginia passed the Act approved March 6, 1900, entitled

'An Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the protection of the Commonwealth of Virginia in the premises,' the purpose of which Act is sufficiently set forth in its title, and a copy of the act will also be hereinafter shown as one of the exhibits herewith filed."

"20. The Commission acting under said last mentioned act made most earnest efforts to bring about an amicable adjustment of the matters hereinbefore set forth with West Virginia, but all of their efforts in that behalf proved ineffectual and unavailing. An application to this Honorable Court being thus left as the only alternative for Virginia, this suit has been instituted at the request and direction of the said Commission, and in strict conformity with the provisions of the said Act of March 6, 1900, all of which will be more fully and completely shown by the Report of the said Commission dated January 6, 1906, made to the General Assembly of Virginia now in session, a copy of which Report and the documents accompanying the same, and referred to therein, will be exhibited as a part of this Bill."

21. Enumerates exhibits attached to the bill and prayed to be regarded as part therof.

22. The bill prayed: "Forasmuch, therefore, as your Oratrix is remediless save in this form and forum, and to the end that the State of West Virginia may be duly served, through her Governor and Attorney-General, with a copy of this bill, your Oratrix prays that the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your Oratrix, in her own right and as trustee as aforesaid; that the principles upon which such accounting shall be had may be ascertained and declared, and a true and proper settlement made of the matters and things above recited and set forth; that such accounting be had and settlement made under the supervision and direction of this Court by such Auditor or Master as may by the Court be selected and empowered to that end, and that proper and full reports of such accounting and settlement may be made to this Court; that the State of West Virginia may be required to produce before such Auditor or Master, so to be appointed, all such official entries, documents, reports and proceedings as may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth, in order to a full and correct settlement and adjustment of the accounts between the two States; that this Court will adjudicate and determine the amount due to your Oratrix by the State of West Virginia in the premises; and that all such other and further and general relief be granted unto your Oratrix in the premises as the nature of her case may require or to equity may seem meet."

Attached to the bill were the numerous exhibits referred to.

The State of West Virginia demurred and assigned special causes as follows:

"First. That it appears by said bill that there is a misjoinder of parties plaintiff and a misjoinder of causes of action. The said bill is brought by the Commonwealth of Virginia to recover debts alleged to be due to her in her own right from the defendant for property and money alleged to have been transferred and delivered to the defendant under certain acts of the legislature passed in 1863, and also, as trustee for the owners of certain certificates mentioned and described in said bill, to have an accounting to ascertain and declare the amount claimed to be due from the defendant as her just proportion of the public debt of the plaintiff prior to the first day of January, 1861.

"Second. That this court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the said bill that the matters therein set forth do not constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and determined in this court, and this court has no power to render or enforce any final judgment or decree thereon.

"Third. That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who are the alleged owners of certain certificates in the said bill set forth and described.

"Fourth. That the said bill does not state facts sufficient to entitle the Commonwealth of Virginia to the relief prayed for, or to any relief, either in her own right or as trustee for the owners of the certificates therein set forth and described.

"Fifth. That it does not appear by said bill that the Attorney General has ever been authorized to institute and prosecnte this suit in the name of the Commonwealth of Virginia in her own right, but only as trustee for the use and benefit of the owners of certain certificates mentioned in the act of March 6, 1900, which is referred to and made part of said bill.

"Sixth. That the said bill does not sufficiently and definitely set forth the claims and demands relied upon, but the allegations thereof are so indefinitely and uncertain that no proper answer can be made thereto.

"Seventh. That the allegations in the said bill are not sufficient to entitle the plaintiff therein, either in her own right or as trustee, to an account or to a discovery from this defendant.

"Eighth. That the said bill does not contain any prayer for a judgment or decree or any other final relief against this defendant."

Hearing on the demurrer was had March 11, 12, 1907.

Mr. Chief Justice FULLER delivered the opinion of the Court:

The State of West Virginia was admitted into the Union June 20, 1863, under the proclamation of the President of the United States of April 20, 1863, in pursuance of the act of Congress approved December 31, 1862, upon the terms and conditions prescribed by the Commonwealth of Virginia in ordinances adopted in convention and in acts passed by the General Assembly of the Restored Government of the Commonwealth, giving her consent to the formation of a new State out of her territory, with a constitution adopted for the new State by the people thereof. The

ninth section of the ordinance adopted by the people of the Restored State of Virginia in convention assembled in the city of Wheeling, Virginia, on August 20, 1861, entitled "An ordinance to provide for the formation of a new State out of a portion of the territory of this State," provided as follows:

"9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government, since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the Commonwealth from the counties included within the said new State during the same period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation, shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia. . . ."

The consent of the Commonwealth of Virginia was given to the formation of a new State on this condition. February 3 and 4, 1863, the General Assembly of the Restored State of Virginia enacted two statutes in pursuance of the provisions of which money and property amounting to and of the value of several millions of dollars were, after the admission of the new State, paid over and transferred to West Virginia. The Constitution of the State of West Virginia when admitted contained these provisions, being sections 5, 7 and 8 of Article VIII thereof, as follows:

"5. No debt shall be contracted by this State, except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war."

"7. The legislature may at any time direct a sale of the stocks owned by the State in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt; and hereafter the State shall not become a stockholder in any bank." . . .

"8. An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years."

The "public debt" and the "previous liability" manifestly referred to a portion of the public debt of the original State of Virginia and liability for the money and property of the original State, which had been received by West Virginia under the acts of the General Assembly above cited, enacted while the territory and people afterwards forming the State of West Virginia constituted a part of the Commonwealth of Virginia, though one may be involved in the other; while the provisions of sections 7 and 8 were obviously framed in compliance with the conditions on which the

consent of Virginia was given to the creation of the State of West Virginia, and the money and property were transferred. From 1865 to 1905 various efforts were made by Virginia through its constituted authorities to effect an adjustment and settlement with West Virginia for an equitable proportion of the public debt of the undivided State, proper to be borne and paid by West Virginia, but all these efforts proved unavailing, and it is charged that West Virginia refused or failed to take any action or do anything for the purpose of bringing about a settlement or adjustment with Virginia.

The original jurisdiction of this court was, therefore, invoked by Virginia to procure a decree for an accounting as between the two States, and, in order to a full and correct adjustment of the accounts, the adjudication and determination of the amount due Virginia by West Virginia in the premises.

But it is objected that this court has no jurisdiction because the matters set forth in the bill do not constitute such a controversy or such controversies as can be heard and determined in this court, and because the court has no power to enforce and therefore none to render any final judgment or decree herein. We think these objections are disposed of by many decisions of this court. *Cohens* v. *Virginia*, 6 Wheat. 264, 378, 406; *Kansas* v. *Colorado*, 185 U. S. 125; *Kansas* v. *Colorado*, May 13, 1907, 206 U. S. p. ; *Missouri* v. *Illinois*, 180 U. S. 208; *Same case*, 200 U. S. 496; *Georgia* v. *Copper Company*, May 13, 1907, 206 U. S. p. ; *United States* v. *Texas*, 143 U. S. 621; *United States* v. *North Carolina*, 136 U. S. 211; *United States* v. *Michigan*, 190 U. S. 379.

In *Cohens* v. *Virginia*, the Chief Justice said: "In the second class, the jurisdiction depends entirely on the character of the parties. In this are comprehended 'controversies between two or more States, between a State and citizens of another State,' 'and between a State and foreign States, citizens or subjects.' If these be the parties, it is entirely unimportant what may be the subject of controversy. Be it what it may, these parties have a constitutional right to come into the courts of the Union."

And, referring to the Eleventh Amendment, it was further said:

"It is a part of our history, that, at the adoption of the Constitution, all the States were greatly indebted; and the apprehension that these debts might be prosecuted in the Federal courts formed a very serious objection to that instrument. Suits were instituted; and the court maintained its jurisdiction. The alarm was general; and, to quiet the apprehensions that were so extensively entertained, this amendment was proposed in Congress, and adopted by the State legislatures. That its motive was not to maintain the sovereignty of a State from the degradation supposed to attend a compulsory appearance before the tribunal of the nation, may be inferred from the terms of the amendment. It does not comprehend controversies between two or more States, or between a State and a foreign State. The jurisdiction of the court still extends to these cases; and in these a State

may still be sued. We must ascribe the amendment, then, to some other cause than the dignity of a State. There is no difficulty in finding this cause. Those who were inhibited from commencing a suit against a State, or from prosecuting one which might be commenced before the adoption of the amendment, were persons who might probably be its creditors. There was not much reason to fear that foreign or sister States would be creditors to any considerable amount, and there was reason to retain the jurisdiction of the court in those cases, because it might be essential to the preservation of peace. The amendment, therefore, extended to suits commenced or prosecuted by individuals, but not to those brought by States."

By the cases cited, and there are many more, it is established that, in the exercise of original jurisdiction as between States, this court necessarily in such a case as this has jurisdiction.

United States v. *North Carolina* and *United States* v. *Michigan*, *supra*, were controversies arising upon pecuniary demands, and jurisdiction was exercised in those cases just as in those for the prevention of the flow of polluted water from one State along the borders of another State, or of the diminution in the natural flow of rivers by the State in which they have their sources through and across another State or States, or of the discharge of noxious gases from works in one State over the territory of another.

The object of the suit is a settlement with West Virginia, and to that end a determination and adjudication of the amount due by that State to Virginia, and when this court has ascertained and adjudged the proportion of the debt of the original State which it would be equitable for West Virginia to pay, it is not to be presumed on demurrer that West Virginia would refuse to carry out the decree of this court. If such repudiation should be absolutely asserted we can then consider by what means the decree may be enforced. Consent to be sued was given when West Virginia was admitted into the Union, and it must be assumed that the Legislature of West Virginia would in the natural course make provision for the satisfaction of any decree that may be rendered.

It is, however, further insisted that this court cannot proceed to judgment because of an alleged compact entered into between Virginia and West Virginia, with the consent of Congress, by which the question of the liability of Virginia to West Virginia was submitted to the arbitrament and award of the Legislature of West Virginia as the sole tribunal which could pass upon it. As we have seen, the Constitution of West Virginia when admitted into the Union contained the provision: "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, one thousand eight hundred and sixty-one, shall be assumed by this State, and the Legislature shall ascertain the same as soon as may be practicable and provide for the liquidation of the same by a

sinking fund and redeem the principal within thirty-four years." And it is said that, on May 13, 1862, the Legislature of Virginia passed an act entitled "An act giving the consent of the Legislature of Virginia to the formation and erection of a new State within the jurisdiction of this State," by which consent was given to the creation of the proposed new State, "according to the boundaries and under the provisions set forth in the Constitution for the said State of West Virginia, and the schedule thereto annexed, proposed by the convention which assembled at Wheeling on the twenty-sixth day of November, 1861;" and that by the act of Congress the consent of that body was given to all those provisions which thus became a constitutional and legal compact between the two States. The act of May 13, 1862, was not made a part of the case stated in the bill, and its validity is denied by counsel for Virginia, but it is unnecessary to go into that, for when Virginia, on August 20, 1861, by ordinance provided "for the formation of a new State out of the territory of this State," and declared therein that "the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," to be ascertained as provided, it is to be supposed that the new State had this in mind when it framed its own constitution, and that when that instrument provided that its Legislature should "ascertain the same as soon as practicable," it referred to the method of ascertainment prescribed by the Virginia convention. Reading the Virginia ordinance and the West Virginia constitutional provision *in pari materia*, it follows that what was meant by the expression that the "Legislature shall ascertain" was that the Legislature should ascertain as soon as practicable the result of the pursuit of the method prescribed, and provide for the liquidation of the amount so ascertained. And it may well be inquired why, in the forty-three years that have elapsed since the alleged compact was entered into, West Virginia has never indicated that she stood upon such a compact, and, if so, why no step has ever been taken by West Virginia to enter upon the performance of the duty which such "compact" imposed, and to notify Virginia that she was ready and willing to discharge such duty.

It is also urged that Virginia had no interest in the subject-matter of the controversy because she had been released from all liability on account of the public debt of the old Commonwealth, evidenced by her bonds outstanding on the first day of January, 1861. This relates to the acts of the General Assembly of Virginia of March 30, 1871, March 28, 1879, February 14, 1882, February 20, 1892, March 6, 1894, and March 6, 1900. According to the bill, Virginia by the act of March 30, 1871, and subsequent acts, in an attempt to provide for the funding and payment of the public debt, having estimated that the liability of West Virginia was for one-third of the amount of the old bonds, provided for the issue of new bonds to the amount

of two-thirds of the total, and for the issue of certificates for the other third, which showed that Virginia held the old bonds so far as unfunded in trust for the holders or their assignees to be paid by the funds expected to be obtained from West Virginia as her "just and equitable proportion of the public debt." The legislation resulted in the surrender of most of the old bonds to Virginia, satisfied as to two-thirds, and held as security for the creditors as to one-third. We do not care to take up and discuss this legislation. We are satisfied that as we have jurisdiction, these questions ought not to be passed upon on demurrer. *Kansas* v. *Colorado*, 185 U. S. 125, 144, 145. And this also furnishes sufficient ground for not considering at length the objection of multifariousness. The observations of Lord Cottenham, in *Campbell* v. *Mackay*, 1 Mylne & Craig, 603, that it is impracticable to lay down any rule as to what constitutes multifariousness, as an abstract proposition; that each case must depend upon its own circumstances; and much must be left where the authorities leave it, to the sound discretion of the court, have been often affirmed in this court. *Oliver* v. *Piatt*, 3 How. 333, 411; *Gaines* v. *Relf*, 2 How. 619, 642. But we do not mean to rule that the bill is multifarious. It is true that the prayer contains, among other things, the request, "that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your Oratrix in her own right and as trustee aforesaid," but it also prays that the court "will adjudicate and determine the amount due to your Oratrix by the State of West Virginia in the premises." And we understand the reference to holding in trust to be in the interest of mere convenience, and that the bill cannot properly be regarded as seeking in chief anything more than a decree for "an equitable proportion of the public debt of the Commonwealth of Virginia on the first day of January, 1861." The objections of misjoinder of parties and misjoinder of causes of action may be treated as resting on matter of surplusage merely, and at all events further consideration thereof may wisely be postponed to final hearing. *Florida* v. *Georgia*, 17 How. 491, 492; *California* v. *Southern Pacific Company*, 157 U. S. 249.

The order will be—

Demurrer overruled without prejudice to any question, and leave to answer by the first Monday of next term.

True copy.

Test:

Clerk Supreme Court U. S.

Supreme Court of the United States.

No. 2 Original.—October Term, 1910.

Commonwealth of Virginia
vs.
State of West Virginia. } In Equity.

[March 6, 1911.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a bill brought by the Commonwealth of Virginia to have the State of West Virginia's proportion of the public debt of Virginia as it stood before 1861 ascertained and satisfied. The bill was set forth when the case was before this Court on demurrer. 206 U. S. 290. Nothing turns on the form or contents of it. The object has been stated. The bill alleges the existence of a debt contracted between 1820 and 1861 in connection with internal improvements intended to develop the whole State, but with especial view to West Virginia, and carried through by the votes of the representatives of the West Virginia counties. It then sets forth the proceedings for the formation of a separate State and the material provisions of the ordinance adopted for that purpose at Wheeling on August 20, 1861, the passage of an act of Congress for the admission of the new State under a constitution that had been adopted, and the admission of West Virginia into the Union, all of which we shall show more fully a little further on. Then follows an averment of the transfer in 1863 to West Virginia of the property within her boundaries belonging to West Virginia, to be accounted for in the settlement thereafter to be made with the last-named State. As West Virginia gets the benefit of this property without an accounting, on the principles of this decision, it needs not to be mentioned in more detail. A further appropriation to West Virginia is alleged of $150,000, together with unappropriated balances, subject to accounting for the surplus on hand received from counties outside of the new State. Then follows an argumentative averment of a contract in the Constitution of West Virginia to assume an equitable proportion of the above-mentioned public debt, as hereafter will be explained. Attempts between 1865 and 1872 to ascertain the two States' proportion of the debt and their failure are averred, and the subsequent legislation and action of Virginia in arranging with the bondholders, that will be explained hereafter so far as needs. Substantially all the bonds outstand-

ing in 1861 have been taken up. It is stated that both in area of territory and in population West Virginia was equal to about one-third of Virginia, that being the proportion that Virginia asserts to be the proper one for the division of the debt, and this claim is based upon the division of the State, upon the above-mentioned Wheeling ordinance and the Constitution of the new State, upon the recognition of the liability by statute and resolution, and upon the receipt of property as has been stated above. After stating further efforts to bring about an adjustment and their failure, the bill prays for an accounting to ascertain the balance due to Virginia in her own right and as trustee for bondholders and an adjudication in accord with this result.

The answer admits a debt of about $33,000,000, but avers that the main object of the internal improvements in connection with which it was contracted was to afford outlets to the Ohio River on the west and to the seaboard on the east for the products of the eastern part of the State, and to develop the resources of that part, not those of what is now West Virginia. In aid of this conclusion it goes into some elaboration of details. It admits the proceedings for the separation of the State and refers to an act of May, 1862, consenting to the same, to which we also shall refer. It denies that it received property of more than a little value from Virginia or that West Virginia received more than belonged to her in the way of surplus revenue on hand when she was admitted to the Union, and denies that any liability for these items was assumed by her Constitution. It sets forth in detail the proceedings looking to a settlement, but as they have no bearing upon our decision we do not dwell upon them. It admits the transactions of Virginia with the bondholders and sets up that they discharged the Commonwealth from one-third of its debt and that what may have been done as to two-thirds does not concern the defendant, since Virginia admits that her share was not less than that. If the bonds outstanding in 1861 have been taken up it is only by the issue of new bonds for two-thirds and certificates to be paid by West Virginia alone for the other third. Liability for any payments by Virginia is denied and accountability, if any, is averred to be only on the principle of § 9 of the Wheeling ordinance, to be stated. It is set up further that under the Constitution of West Virginia her equitable proportion can be established by her Legislature alone, that the liquidation can be only in the way provided by that instrument, and hence that this suit cannot be maintained. The settlement by Virginia with her creditors also is pleaded as a bar, and that she brings this suit solely as trustee for them.

The grounds of the claim are matters of public history. After the Virginia ordinance of secession, citizens of the State who dissented from that ordinance organized a government that was recognized as the State of

Virginia by the Government of the United States. Forthwith a convention of the restored State, as it was called, held at Wheeling, proceeded to carry out a long entertained wish of many West Virginians by adopting an ordinance for the formation of a new State out of the western portion of the old Commonwealth. A part of section 9 of the ordinance was as follows: "The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the state government, since any part of said debt was contracted; and deducting therefrom the monies paid into the treasury of the Commonwealth from the counties included within the said new state during the same period." Having previously provided for a popular vote, a constitutional convention, &c., the ordinance in § 10 ordained that when the General Assembly should give its consent to the formation of such new State, it should forward to the Congress of the United States such consent, together with an official copy of such constitution, with the request that the new State might be admitted into the union of States.

A constitution was framed for the new State by a constitutional convention, as provided in the ordinance, on November 26, 1861, and was adopted. By Article 8, § 8, "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first of January in the year one thousand eight hundred and sixty-one, shall be assumed by this State; and the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof, by a sinking fund sufficient to pay the accruing interest, and redeem the principal within thirty-four years." An act of the Legislature of the restored State of Virginia, passed May 13, 1862, gave the consent of that Legislature to the erection of the new State "under the provisions set forth in the constitution for the said State of West Virginia." Finally Congress gave its sanction by an act of December 31, 1862, c. 6, 12 Stat. 633, which recited the framing and adoption of the West Virginia constitution and the consent given by the Legislature of Virginia through the last mentioned act, as well as the request of the West Virginia convention and of the Virginia Legislature, as the grounds for its consent. There was a provision for the adoption of an emancipation clause before the act of Congress should take effect, and for a proclamation by the President, stating the fact, when the desired amendment was made. Accordingly, after the amendment and a proclamation by President Lincoln, West Virginia became a State on June 20, 1863.

It was held in 1870 that the foregoing constituted an agreement between the old State and the new, *Virginia* v. *West Virginia*, 11 Wall. 39, and

so much may be taken practically to have been decided again upon the demurrer in this case, although the demurrer was overruled without prejudice to any question. Indeed, so much is almost if not quite admitted in the answer. After the answer had been filed the cause was referred to a master by a decree made on May 4, 1908, 209 U. S. 514, 534, which provided for the ascertainment of the facts made the basis of apportionment by the original Wheeling ordinance, and also of other facts that would furnish an alternative method if that prescribed in the Wheeling ordinance should not be followed; this again without prejudice to any question in the cause. The master has reported, the case has been heard upon the merits, and now is submitted to the decision of the Court.

The case is to be considered in the untechnical spirit proper for dealing with a quasi-international controversy, remembering that there is no municipal code governing the matter, and that this Court may be called on to adjust differences that cannot be dealt with by Congress or disposed of by the legislature of either State alone. *Missouri* v. *Illinois*, 200 U. S. 496, 519, 520. *Kansas* v. *Colorado*, 206 U. S. 46, 82–84. Therefore we shall spend no time on objections as to multifariousness, laches and the like, except so far as they affect the merits, with which we proceed to deal. See *Rhode Island* v. *Massachusetts*, 14 Peters, 210, 257. *United States* v. *Beebe*, 127 U. S. 338.

The amount of the debt January 1, 1861, that we have to apportion no longer is in dispute. The master's finding was accepted by West Virginia and at the argument we understood Virginia not to press her exception that it should be enlarged by a disputed item. It was $33,897,073.82, the sum being represented mainly by interest-bearing bonds. The first thing to be decided is what the final agreement was that was made between the two States. Here again we are not to be bound by technical form. A State is superior to the forms that it may require of its citizens. But there would be no technical difficulty in making a contract by a constitutive ordinance if followed by the creation of the contemplated State. *Wedding* v. *Meyler*, 192 U. S. 573, 583. And, on the other hand, there is equally little difficulty in making a contract by the constitution of the new State, if it be apparent that the instrument is not addressed solely to those who are to be subject to its provisions, but is intended to be understood by the parent State and by Congress as embodying a just term which conditions the parent's consent. There can be no question that such was the case with West Virginia. As has been shown, the consent of the Legislature of the restored State, was a consent to the admission of West Virginia under the provisions set forth in the Constitution for the would-be State, and Congress gave its sanction only on the footing of the same Constitution and the consent of Virginia in the last-

mentioned act. These three documents would establish a contract without more. We may add, with reference to an argument to which we attach little weight, that they establish a contract of West Virginia with Virginia. There is no reference to the form of the debt or to its holders, and it is obvious that Virginia had an interest that it was most important that she should be able to protect. Therefore West Virginia must be taken to have promised to Virginia to pay her share, whoever might be the persons to whom ultimately the payment was to be made.

We are of opinion that the contract established as we have said is not modified or affected in any practical way by the preliminary suggestions of the Wheeling ordinance. Neither the ordinance nor the special mode of ascertaining a just proportion of the debt that it puts forward is mentioned in the Constitution of West Virginia, or in the act of Virginia giving her consent, or in the act of Congress by which West Virginia became a State. The ordinance required that a copy of the new constitution should be laid before Congress, but said nothing about the ordinance itself. It is enough to refer to the circumstances in which the separation took place to show that Virginia is entitled to the benefit of any doubt so far as the construction of the contract is concerned. See opinion of Attorney-General Bates to President Lincoln, 10 Op. Att. Gen. 426. The mode of the Wheeling ordinance would not throw on West Virginia a proportion of the debt that would be just, as the ordinance requires, or equitable, according to the promise of the Constitution, unless upon the assumption that interest on the public debt should be considered as part of the ordinary expenses referred to in its terms. That we believe would put upon West Virginia a larger obligation than the mode that we adopt, but we are of opinion that her share should be ascertained in a different way. All the modes, however, consistent with the plain contract of West Virginia, whether under the Wheeling ordinance or the Constitution of that State, come out with surprisingly similar results.

It was argued, to be sure, that the debt of Virginia was incurred for local improvements and that in such a case, even apart from the ordinance, it should be divided according to the territory in which the money was expended. We see no sufficient reason for the application of such a principle to this case. In form the aid was an investment. It generally took the shape of a subscription for stock in a corporation. To make the investment a safe one the precaution was taken to require as a condition precedent that two or three-fifths of the stock should have been subscribed for by solvent persons fully able to pay, and that one-fourth of the subscriptions should have been paid up into the hands of the treasurer. From this point of view the venture was on behalf of the whole State. The parties interested in the investment were the same, wherever the sphere of corporate action

might be. The whole State would have got the gain and the whole State must bear the loss, as it does not appear that there are any stocks of value on hand. If we should attempt to look farther, many of the corporations concerned were engaged in improvements that had West Virginia for their objective point, and we should be lost in futile detail if we should try to unravel in each instance the ultimate scope of the scheme. It would be unjust, however, to stop with the place where the first steps were taken and not to consider the purpose with which the enterprise was begun. All the expenditures had the ultimate good of the whole State in view. Therefore we adhere to our conclusion that West Virginia's share of the debt must be ascertained in a different way. In coming to it we do but apply against West Virginia the argument pressed on her behalf to exclude her liability under the Wheeling ordinance in like cases. By the ordinance West Virginia was to be charged with all State expenditures within the limits thereof. But she vigorously protested against being charged with any sum expended in the form of a purchase of stocks.

But again, it was argued that if this contract should be found to be what we have said, then the determination of a just proportion was left by the Constitution to the Legislature of West Virginia, and that irrespectively of the words of the instrument it was only by legislation that a just proportion could be fixed. These arguments do not impress us. The provision in the Constitution of the State of West Virginia that the Legislature shall ascertain the proportion as soon as may be practicable was not intended to undo the contract in the preceding words by making the representative and mouthpiece of one of the parties the sole tribunal for its enforcement. It was simply an exhortation and command from supreme to subordinate authority to perform the promise as soon as might be and an indication of the way. Apart from the language used, what is just and equitable is a judicial question similar to many that arise in private litigation, and in nowise beyond the competence of a tribunal to decide.

The ground now is clear, so far as the original contract between the two States is concerned. The effect of that is that West Virginia must bear her just and equitable proportion of the public debt as it was intimated in *Hartman* v. *Greenhow*, 102 U. S. 672, so long ago as 1880, that she should. It remains for us to consider such subsequent acts as may have affected the original liability or as may bear on the determination of the amount to be paid. On March 30, 1871, Virginia, assuming that the equitable share of West Virginia was about one-third, passed an act authorizing an exchange of the outstanding bonds, &c., and providing for the funding of two-thirds of the debt with interest accrued to July 1, 1871, by the issue of new bonds bearing the same rate of interest as the old, six per

cent. There were to be issued at the same time, for the other one-third, certificates of same date, setting forth the amount of the old bond that was not funded, that payment thereof with interest at the rate prescribed in the old bond would be provided for in accordance with such settlement as should be had between Virginia and West Virginia in regard to the public debt, and that Virginia held the old bonds in trust for the holder or his assignees. There were further details that need not be mentioned. The coupons of the new bonds were receivable for all taxes and demands due to the State. *Hartman* v. *Greenhow*, 102 U. S. 672. *McGahey* v. *Virginia*, 135 U. S. 662. The certificates issued to the public under this statute and outstanding amount to $12,703,451.79.

The burden under the statute of 1871 still being greater than Virginia felt able to bear, a new refunding act was passed on March 28, 1879, reducing the interest and providing that Virginia would negotiate or aid in negotiating with West Virginia for the settlement of the claims of certificate holders and that the acceptance of certificates 'for West Virginia's one-third' under this act should be an absolute release of Virginia from all liability on account of the same. Few of these certificates were accepted. On February 14, 1882, another attempt was made, but without sufficient success to make it necessary to set forth the contents of the statute. The certificates for balances not represented by bonds, "constituting West Virginia's share of the old debt," stated that the balance was "to be accounted for by the state of West Virginia without recourse upon this commonwealth."

On February 20, 1892, a statute was passed which led to a settlement, described in the bill as final and satisfactory. This provided for the issue of bonds for nineteen million dollars in exchange for twenty-eight millions outstanding, not funded, the new bonds bearing interest at two per cent for the first ten years and three per cent for ninety years; and certificates in form similar to that just stated, in the act of 1882. On March 6, 1894, a joint resolution of the Senate and House of Delegates was passed, reciting the passage of the four above mentioned statutes, the provisions for certificates, and the satisfactory adjustment of the liabilities assumed by Virginia on account of two-thirds of the debt, and appointing a committee to negotiate with West Virginia, when satisfied that a majority of the certificate holders desired it and would accept the amount to be paid by West Virginia in full settlement of the one-third that Virginia had not assumed. The State was to be subjected to no expense. Finally an act of March 6, 1900, authorized the commission to receive and take on deposit the certificates, upon a contract that the certificate holders would accept the amount realized from West Virginia in full settlement of all their claims under the same. It also authorized a suit if certain proportions

of the certificates should be so deposited, as since then they have been—the State, as before, to be subjected to no expense.

On January 9, 1906, the commission reported that apart from certificates held by the State and not entering into this account, there were outstanding of the certificates of 1871 in the hands of the public $12,703,451.79, as we have said, of which the commission held $10,851,294.09, and of other certificates there were in the hands of the public $2,778,239.80, of which the commission held $2,322,141.32.

On the foregoing facts a technical argument is pressed that Virginia has discharged herself of all liability as to one-third of the debt; that, therefore, she is without interest in this suit, and cannot maintain it on her own behalf; that she cannot maintain it as trustee for the certificate holders, *New Hampshire* v. *Louisiana*, 108 U. S. 76; and that the bill is multifarious in attempting to unite claims made by the plaintiff as such trustee with some others set up under the Wheeling ordinance, &c., which, in the view we take, it has not been necessary to mention or discuss. We shall assume it to be true for the purposes of our decision, although it may be open to debate, *Greenhow* v. *Vashon*, 81 Va. 336, 342, 343, that the certificate holders who have turned in their certificates, being much the greater number, as has been seen, by doing so, if not before, surrendered all claims under the original bonds or otherwise against Virginia to the extent of one-third of the debt. But even on that concession the argument seems to us unsound.

The liability of West Virginia is a deep seated equity, not discharged by changes in the form of the debt, nor split up by the unilateral attempt of Virginia to apportion specific parts to the two States. If one-third of the debt were discharged in fact, to all intents, we perceive no reason, in what has happened, why West Virginia should not contribute her proportion of the remaining two-thirds. But we are of opinion that no part of the debt is extinguished, and further, that nothing has happened to bring the rule of *New Hampshire* v. *Louisiana* into play. For even if Virginia is not liable she has the contract of West Virginia to bear an equitable share of the whole debt, a contract in the performance of which the honor and credit of Virginia is concerned, and which she does not lose her right to insist upon by her creditors accepting from necessity the performance of her estimated duty as confining their claims for the residue to the party equitably bound. Her creditors never could have sued her if the supposed discharge had not been granted, and the discharge does not diminish her interest and right to have the whole debt paid by the help of the defendant. The suit is in Virginia's own interest, none the less that she is to turn over the proceeds. See *United States* v. *Beebe*, 127 U. S. 338, 342. *United States* v. *Nashville, Chattanooga & St. Louis Ry.*

Co., 118 U. S. 120, 125, 126. Moreover, even in private litigation it has been held that a trustee may recover to the extent of the interest of his *cestui que trust*. *Lloyd's* v. *Harper*, 16 Ch. D. 290, 309, 315. *Lamb* v. *Vice*, 6 M. & W., 467, 472. We may add that in all its aspects it is a suit on the contract, and it is most proper that the whole matter should be disposed of at once.

It remains true then, notwithstanding all the transactions between the old Commonwealth and her bondholders, that West Virginia must bear her equitable proportion of the whole debt. With a qualification which we shall mention in a moment, we are of opinion that the nearest approach to justice that we can make is to adopt a ratio determined by the master's estimated valuation of the real and personal property of the two States on the date of the separation, June 20, 1863. A ratio determined by population or land area would throw a larger share on West Virginia, but the relative resources of the debtor populations are generally recognized, we think, as affording a proper measure. It seems to us plain that slaves should be excluded from the valuation. The master's figures without them are, for Virginia $300,887,367.74, and for West Virginia $92,416,021.65. These figures are criticised by Virginia, but we see no sufficient reason for going behind them, or ground for thinking that we can get nearer to justice in any other way. It seems to us that Virginia cannot complain of the result. They would give the proportion in which the $33,897,073.82 was to be divided, but for a correction which Virginia has made necessary. Virginia with the consent of her creditors has cut down her liability to not more than two-thirds of the debt, whereas at the ratio shown by the figures her share, subject to mathematical correction, is about .7651. If our figures are correct, the difference between Virginia's share, say $25,931,261.47, and the amount that the creditors were content to accept from her, say $22,598,049.21, is $3,333,212.26; subtracting the last sum from the debt leaves $30,563,861.56 as the sum to be apportioned. Taking .235 as representing the proportion of West Virginia we have $7,182,507.46 as her share of the principal debt.

We have given our decision with respect to the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed. In any event, before we could put our judgment in the form of a final decree there would be figures to be agreed upon or to be ascertained by reference to a master. Among other things there still remains the question of interest. Whether any interest is due, and if due from what time it should be allowed and at what rate it should be computed, are matters as to which there is a serious controversy in the record, and concerning which there is room for a wide divergence of opinion. There are many elements to be taken into account on the one side and on the other. The

circumstances of the asserted default and the conditions surrounding the failure earlier to procure a determination of the principal sum payable, including the question of laches as to either party, would require to be considered. A long time has elapsed. Wherever the responsibility for the delay might ultimately be placed, or however it might be shared, it would be a severe result to capitalize charges for half a century—such a thing hardly could happen in a private case analogous to this. Statutes of limitation, if nothing else, would be likely to interpose a bar. As this is no ordinary commercial suit, but, as we have said, a quasi-international difference referred to this Court in reliance upon the honor and constitutional obligations of the States concerned rather than upon ordinary remedies, we think it best at this stage to go no farther, but to await the effect of a conference between the parties, which, whatever the outcome, must take place. If the cause should be pressed contentiously to the end, it would be referred to a master to go over the figures that we have given provisionally, and to make such calculations as might become necessary. But this case is one that calls for forbearance upon both sides. Great States have a temper superior to that of private litigants, and it is to be hoped that enough has been decided for patriotism, the fraternity of the Union, and mutual consideration to bring it to an end.

True copy.

Test:

Clerk Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 2 Original.—October Term, 1915.

Commonwealth of Virginia, Complainant, *vs.* State of West Virginia.	On Petition for a Writ of Execution.

[June 12, 1916.]

Mr. Chief Justice White delivered the opinion of the Court.

In the original cause of *Commonwealth of Virginia* v. *State of West Virginia*, on the 14th day of June, 1915, a decree was rendered in favor of Virginia and against West Virginia for the sum of $12,393.929.50 with interest thereon at the rate of five percentum from July 1st, 1915, until paid. Virginia now petitions for a writ of execution against West Virginia on the ground that such relief is necessary as the latter has taken no steps whatever to provide for the payment of the decree. West Virginia resists the granting of the execution on three grounds: (1) "Because the State of West Virginia, within herself, has no power to pay the judgment in question, except through the legislative department of her government, and she should be given an opportunity to accept and abide by the decision of this Court, and, in the due and ordinary course, to make provision for its satisfaction, before any steps looking to her compulsion be taken; and to issue an execution at this time would deprive her of such opportunity, because her Legislature has not met since the rendition of said judgment, and will not again meet in regular session until the second Wednesday in January, 1917, and the members of that body have not yet been chosen;" (2) because presumptively the State of West Virginia has no property subject to execution; and (3) because although the Constitution imposes upon this court the duty, and grants it full power, to consider controversies between States and therefore authority to render the decree in question, yet with the grant of jurisdiction there was conferred no authority whatever to enforce a money judgment against a State if in the exercise of jurisdiction such a judgment was entered.

Without going further, we are of the opinion that the first ground furnishes adequate reason for not granting the motion at this time.

The prayer for the issue of a writ of execution is therefore denied, without prejudice to the renewal of the same after the next session of the legislature of the State of West Virginia has met and had a reasonable opportunity to provide for the payment of the judgment.

And it is so ordered.

A true copy.

Test:

Clerk Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 2, Original.—October Term, 1913.

Commonwealth of Virginia *vs.* State of West Virginia.	On Motion of the State of West Virginia for Leave to File a Supplemental Answer to the Bill of Complaint of the Commonwealth of Virginia.

[June 8, 1914.]

Mr. Chief Justice White delivered the opinion of the Court.

This case, which was begun in 1906, was elaborately argued in 1907 on a demurrer, which was overruled. 206 U. S. 290. It was again argued in 1908 on a motion to appoint a Master. 209 U. S. 514. Before that officer there was an extended hearing and a full report of all the matters involved was filed in March, 1910. It was then argued on a motion to take further testimony, and was ultimately heard in an argument which extended many days, every party in interest being represented, in the month of January, 1911.

Notwithstanding these facts when in March, 1911, the Court came to decide the controversy, although it fully reviewed and passed upon the fundamental issues, as its obvious duty required it to do, and fixed the principal sum due by the State of West Virginia to the State of Virginia, in view of the consideration due to the parties as States and that the cause was, as then said, "no ordinary commercial suit, but, . . . a quasi-international difference referred to this court in reliance upon the honor and constitutional obligations of the States concerned rather than upon ordinary remedies," the controversy was not completely and irrevocably disposed of but was left open for a time not specified to the end that any clerical errors that might have crept into the calculations of the sums due could be corrected and to give the States time to consider the subject of liability for interest in the light of what had been decided and to agree as to the rate and period of the interest to be paid on the principal sum which was determined. 220 U. S. 1.

On the convening of the court in the following October, 1911, a motion was made on behalf of the State of Virginia to proceed at once to a final decree. Listening to the suggestion of the State of West Virginia to the effect that it desired further time to consider

the subject, and in view of the public considerations which had prevailed when the decree was entered, the motion of Virginia was overruled. 222 U. S. 17.

Yet further, when in November, 1913, another motion on the part of Virginia was made to set the case down to be finally disposed of at once upon the statement that no agreement between the parties was possible, again giving heed to the request of West Virginia through its constituted officers for a postponement for a stated time and to the statement that they were engaged in an honest endeavor to deal with the controversy and if possible to come to an agreement as to the subjects left open, the motion of Virginia was again refused, 231 U. S. 89, and as it was possible to give to the State of West Virginia all the time which that State in resisting the motion asked and yet secure against the possibility of the hearing being carried over to another term, the case was assigned for hearing on the 13th of April of this year. When that day was reached, the State of West Virginia, in accord with a motion filed some days before, prayed leave to be permitted to file a supplemental answer asserting the existence of credits, which if properly considered would materally reduce the sum fixed as due to the State of Virginia, the said answer in addition asserting various grounds why interest should not be allowed in favor of Virginia and against West Virginia on the sum due. Resisting this request the State of Virginia insists that the items embraced in the supplemental answer asked to be filed had in effect already entered into the considerations by which the principal sum due was fixed, and that if not, the case should not be postponed for the purpose of permitting the rights urged in the answer to be availed of because every item concerning such alleged rights was proved in the case before the Master, was mentioned in his report and was known or could have been known by the use of ordinary diligence by those representing West Virginia. And it is this controversy we now come to dispose of.

Without intimating any opinion whatever as to whether the items with which the proposed supplemental answer deals entered into the processes of calculation or reasoning by which the sum due was previously fixed, and moreover, without intimating any opinion as to how far the items embraced in the answer could serve as credits upon the sum previously found due and therefore to that extent reduce the amount, we think it is obvious that most of the items embraced in the answer were contained in the Master's report, and in any event all were available then for every defense now based upon them if their consideration had been pressed in the aspect and with the assertions of right now made.

The question then is, Under these conditions ought the permission to file the supplemental answer be granted? We think it must be conceded that in a case between ordinary litigants the application of the ordinary rules of legal procedure would render it impossible under the circumstances which we have stated to grant the request. We are of the opinion, however, that such concession ought not to be here controlling. As we have pointed out, in acting in this case from first to last the fact that the suit was not an ordinary one concerning a difference between individuals, but was a controversy between States involving grave questions of public law determinable by this court under the exceptional grant of power conferred upon it by the Constitution, has been the guide by which every step and every conclusion hitherto expressed has been controlled. And we are of the opinion that this guiding principle should not now be lost sight of, to the end that when the case comes ultimately to be finally and irrevocably disposed of, as come ultimately it must in the absence of agreement between the parties, there may be no room for the slightest inference that the more restricted rules applicable to individuals have been applied to a great public controversy, or that anything but the largest justice after the amplest opportunity to be heard has in any degree entered into the disposition of the case. This conclusion, which we think is required by the duty owed to the moving state, also in our opinion operates no injustice to the opposing state, since it but affords an additional opportunity to guard against the possibility of error, and thus reach the result most consonant with the honor and dignity of both parties to the controversy.

Because of these convictions, we therefore make the following order:

That the motion on the part of the State of West Virginia to file the supplemental answer be and the same is hereby granted; and that the averments in such answer be and the same shall be considered as traversed by the State of Virginia; that the subject matter of the supplemental answer as traversed be at once referred for consideration and report to Charles E. Littlefield, Esq., the Master before whom the previous hearings were had, with directions to hear and consider such evidence and testimony as to the matters set forth in the supplemental answer as the State of West Virginia may deem advisable to proffer and such counter showing on the part of the State of Virginia as that State may deem advisable to make. The report on the subject to embrace the testimony so taken and the conclusions deduced therefrom as well as the views of the Master con-

cerning the operation and effect of the proof thus offered, if any, upon the principal sum found to be due by the previous decree of this court. Nothing in this order to vacate or change in any manner or in any particular the previous decree, and the same to stand wholly unaffected by the order now made or any action taken thereunder until the examination and report herein provided for is made and this court acts upon the same. It is further directed that the proceedings before the master be so conducted as to secure a report on or before the second Monday of October, 1914.

True copy.

Test:

Clerk Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

No. 2, Original.—October Term, 1913.

Commonwealth of Virginia
vs.
State of West Virginia.

On motion of the State of Virginia to proceed to a final hearing.

[November 10, 1913.]

Mr. Chief Justice White delivered the opinion of the Court.

In March, 1911, (*Virginia* v. *West Virginia*, 220 U. S. 1,) our decision was given "with respect to the basis of liability and the share of the principal of the debt of Virginia that West Virginia assumed." In view, however, of the nature of the controversy, of the consideration due the respective states and the hope that by agreement between them further judicial action might be unnecessary, we postponed proceeding to a final decree and left open the question of what, if any, interest was due and the rate thereof, as well as the right to suggest any mere clerical error which it was deemed might have been committed in fixing the sum found to be due upon the basis of liability which was settled. In October, 1911, we overruled without prejudice a motion made by Virginia to proceed at once to a final determination of the cause on the ground that there was no reasonable hope of an amicable adjustment. *Virginia* v. *West Virginia*, 222 U. S. 17.

The motion on behalf of the State of Virginia now before us is virtually a reiteration of the former motion to proceed and is based upon the ground that certain negotiations which have taken place between the Virginia Debt Commission representing Virginia, and a Commission representing West Virginia, appointed in virtue of a joint resolution of the legislature of that state, adopted in 1913, make it indubitably certain that no hope of an adjustment exists. But without reviewing the course of the negotiations relied upon, we think it suffices to say that in resisting the motion the Attorney General of West Virginia on behalf of that State insists that the view taken by Virginia of the negotiations is a misapprehension of the purposes of West Virginia, as that State since the appointment of the Commission on its behalf has been relying upon that Commission "to consummate such an adjustment and settlement of said controversy as to com-

mend the result of its negotiations to the favorable consideration of the Governor and the legislative branch of its government, and thus terminate said controversy to the satisfaction of her people and the Commonwealth of Virginia, and upon the principles of honor and justice to both States, and in fairness to the holders of the debt for whose benefit this controversy is still pending." The Attorney General further stating that in order to accomplish the results just mentioned, a sub-committee of the Commission of West Virginia has been and is engaged in investigating the whole subject with the purpose of preparing a proposition to be submitted to the Virginia Debt Commission, to finally settle the whole matter and that a period of six months' time is necessary to enable the Committee to complete its labors.

Having regard to these representations, we think we ought not to grant the motion to proceed at once to consider and determine the cause, but should, as near as we can do so consistently with justice, comply with the request made for further time to enable the Commissioners of West Virginia to complete the work which we are assured they are now engaged in performing for the purpose of effecting a settlement of the controversy. As, however, the granting of six months' delay would necessitate carrying the case possibly over to the next term and therefore be in all probability an extension of time of more than a year, we shall reduce somewhat the time asked and direct that the case be assigned for final hearing on the 13th day of April next at the head of the call for that day.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 2 Original.—October Term, 1907.

Commonwealth of Virginia, Complainant,
vs.
State of West Virginia, Defendant.

[May 4, 1908.]

This cause having been heard upon the pleadings and accompanying exhibits, it is, on consideration, ordered that it be referred to a special master, to be hereinafter designated, to ascertain and report to the court:

1. The amount of the public debt of the Commonwealth of Virginia on the first day of January, 1861, stating specifically how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidence of said indebtedness.

2. The extent and value of the territory of Virginia and of West Virginia June 20, 1863, and the population thereof, with and without slaves, separately.

3. All expenditures made by the Commonwealth of Virginia within the territory now constituting the State of West Virginia since any part of the debt was contracted.

4. Such proportion of the ordinary expenses of the government of Virginia since any of said debt was contracted, as was properly assignable to the counties which were created into the State of West Virginia on the basis of the average total population of Virginia, with and without slaves, as shown by the census of the United States.

5. And also on the basis of the fair estimated valuation of the property, real and personal, by counties, of the State of Virginia.

6. All moneys paid into the treasury of the Commonwealth from the counties included within the State of West Virginia during the period prior to the admission of the latter State into the Union.

7. The amount and value of all money, property, stocks and credits which West Virginia received from the Commonwealth of Virginia, not embraced in any of the preceding items and not including any property, stocks or credits which were obtained or acquired by the Commonwealth after the date of the organization of the restored government of Virginia, together with the nature and description thereof.

The answers to these inquiries to be without prejudice to any question in the cause.

It is further ordered that the Commonwealth of Virginia and the State of West Virginia shall each, when required, produce before the master, upon oath, all such records, books, papers and public documents as may be in their possession or under their control, and which may, in his judgment, be pertinent to the said inquiries and accounts, or any of them.

And the master is authorized to make, or cause to be made, such examination as he may deem desirable of the books of account, vouchers, documents and public records of either State relating to the inquiries he is herein directed to make, and to cause copies thereof or extracts therefrom to be made for use in making up his report.

All public records published by authority of the Commonwealth of Virginia prior to the 17th day of April, 1861, and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the date aforesaid, which in the judgment of the master may be relevant and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the master, but all such evidence shall be subject to exceptions to its competency. The public acts and records of the two States since the admission of West Virginia into the Union shall be evidence, if pertinent and duly authenticated, but all such evidence tendered by either party shall be subject to proper legal exceptions to its competency.

The master is empowered to summon any persons whose testimony he or either party may deem to be material, and to cause their depositions to be taken before him, or by a notary public or other officer authorized to take the same, after reasonable notice to the adverse party.

The master is authorized and empowered, subject to the approval of the Chief Justice, to employ such stenographers and other clerical assistants as he may find it desirable to employ in order to the prompt and efficient execution of this order of reference, and to agree with such stenographers and typewriters and clerical assistants upon such compensation to be made to them as the master may consider reasonable and just. He is authorized to direct their compensation to be paid out of the funds to be deposited to the credit of this cause.

The complainant shall cause the sum of five thousand dollars to be deposited with the marshal of this court to the credit of this cause, and such further sums as from time to time may be required, on account of the costs and expenses of executing this decree; and the master is authorized from time to time to draw upon the fund so deposited by Virginia for the compensation of the stenographers, typewriters and other clerical assistants whom he may employ, and for any other costs and expenses, including stationery and printing, which may in his judgment be necessary to be incurred in executing this order of reference.

The said marshal shall receive such commission for his services in receiving and disbursing the funds so deposited with him as may be allowed by the court, and he will make a report of his transactions, receipts and disbursements in the premises.

Any notices to be given in connection with the execution of this decree may be given by and to the Attorneys General of the respective States.

The master will make his report with all convenient speed and transmit therewith the evidence on which he proceeds, and is to be at liberty to state any special circumstances he considers of importance, and to state such alternative accounts as may be desired by either of the parties, subject to the direction of the court.

And the court reserves the consideration of the allowance of interest; of the costs of this suit, and all further directions until after the master has made his report; either of the parties to be at liberty to apply to the court as they shall be advised.

True copy.

Test:

Clerk Supreme Court, U. S.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 2, Original.

COMMONWEALTH OF VIRGINIA
vs.
THE STATE OF WEST VIRGINIA
In Equity.

BEFORE
HON. CHARLES E. LITTLEFIELD,
MASTER.

At Richmond, Virginia,
August 17-19 and September 2-12, 1914.

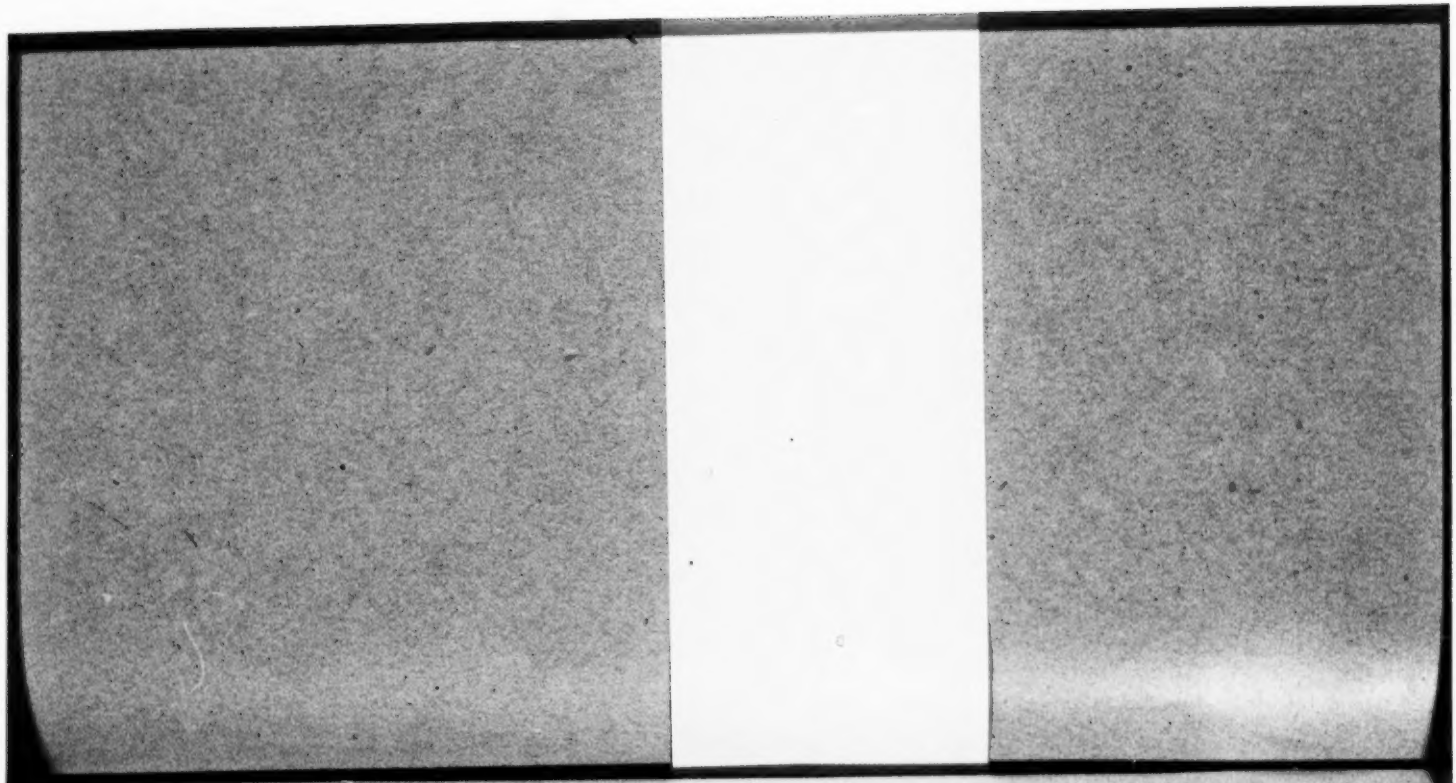
VOLUME I.

RECORD OF HEARINGS.

ERRATA.

Page 530, fifth line of figures from the top should read "$85,158.71" instead of "$285,158.71."

Page 711, eleventh line from the top, after the word "made" insert the word "under."



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August 17-19 and September 2-12, 1914.

VOLUME I.

RECORD OF HEARINGS.

General Index

This index is divided into 107 groups, the groups being arranged so far as feasible with the defendant's supplemental answer, and are numbered 1 to 107 consecutively.

The following is an index to the "groups" showing briefly the subjects included under each group. Immediately following is the detail index under each group.

RELATING TO DEFENDANT'S 1861 EXHIBITS AND TESTIMONY.

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1	Class A.—Cash in the treasury of Virginia January 1, 1861.
2	Class B.—Richmond, Fredericksburg & Potomac Railroad.
3	Class C.—Recapitulation of assets in Class C.
4	Classes C. & D.—Orange & Alexandria Railroad.
5	Classes C. & D.—Richmond & Danville Railroad.
6	Classes C. & D.—Richmond & Petersburg Railroad.
7	Classes C. & D.—Virginia Central Railroad.
8	Classes C. & D.—Blue Ridge Railroad.
9	Class C.—Alexandria, Loudoun & Hampshire Railroad.
10	Classes C. & D.—Winchester & Potomac Railroad.
11	Classes C. & D.—Virginia & Tennessee Railroad.
12	Classes C. & D.—Southside Railroad.
13	Classes C. & D.—Norfolk & Petersburg Railroad.
14	Class C.—Roanoke Navigation Co.
15	Class C.—Alexandria Canal Co.
16	Class C.—Upper Appomattox Co.
17	Class C.—Dismal Swamp Canal Co.
18	Classes C. & D.—Loan to Washington College.
19	Classes C. & D.—Richmond Academy Bonds.
20	Classes C. & D.—Claim against the United States Government.
21	Class C.—Claim against Selden, Withers Company.
22	Classes C. & D.—Richmond, Fredericksburg & Potomac Railroad.
23	Class D.—Recapitulation of assets in Class D.
24	Class D.—Loan to Kanawha Board of J. R. & K. Co.

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25 Class D.—Bank Dividends accrued January 1, 1861.
26 Class E.—Farmers Bank of Virginia.
27 Class E.—Bank of Virginia.
28 Class E.—Bank of the Valley.
29 Class E.—Exchange Bank.
30 Class E.—Northwestern Bank.
31 Class E.—Fairmont Bank.
32 Class E.—"Running account" relating to all banks.
32 Act authorizing sale of bank stocks, etc.
33 Class F.—Securities sold to A. M. & O. Co.
34 Class G.—James River & Kanawha Company.
35 Class G.—Manassas Gap Railroad (claimed as asset 20 in class C.)
36 Class G.—Stock in various companies.
37 Moneys collected from West Virginia counties after June 20, 1863.
38 Summary of claims of West Virginia as set out in 1861 exhibits.
39 Dividends and interest collected by Virginia after January 1, 1861.

RELATING TO THE DEFENDANT'S 1863 EXHIBITS AND TESTIMONY.

40 Class A.—Cash in treasury of Virginia June 20, 1863.
41 Class B.—Richmond, Fredericksburg & Potomac Railroad.
42 Class C.—Recapitulation of assets in class C.
43 Classes C. & D.—Orange & Alexandria Railroad.
44 Classes C. & D.—Richmond & Danville Railroad.
45 Classes C. & D.—Richmond & Petersburg Railroad.
46 Classes C. & D.—Virginia Central Railroad.
47 Classes C. & D.—Blue Ridge Railroad.
48 Class C.—Alexandria, Loudoun & Hampshire Railroad.
49 Class C.—Winchester & Potomac Railroad.
50 Classes C. & D.—Virginia & Tennessee Railroad.
51 Classes C. & D.—Southside Railroad.
52 Classes C. & D.—Norfolk & Petersburg Railroad.
53 Class C.—Roanoke Navigation Co.
55 Class C.—Alexandria Canal Co.
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56 Class C.—Dismal Swamp Canal Co.
57 Classes C. & D.—Loan to Washington College.
58 Classes C. & D.—Richmond Academy Bonds.
59 Classes C. & D.—Claim against the United States Government.
60 Class C.—Claim against Selden, Withers Co.
61 Classes C. & D.—Richmond, Fredericksburg & Potomac Railroad.
62 Class D.—Recapitulation of assets in Class D.
63 Class D.—Bank dividends accrued June 20, 1863.
64 Class E.—Farmers Bank of Virginia.

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65	Class E.—Bank of Virginia.
66	Class E.—Bank of the Valley.
67	Class E.—Exchange Bank.
68	Class E.—Northwestern Bank.
69	Class E.—Fairmont Bank.
70	Class E.—Explanation of running account relating to all banks.
71	Class F.—Securities sold to the A. M. & O. Co.
72	Class G.—James River & Kanawha Canal.
73	Class G.—Manassas Gap Railroad (claimed as asset 20 in class C.)
74	Class G.—Stock in various companies.
75	Moneys collected from West Virginia counties after June 20, 1863.
76	Summary of claims of West Virginia as set out in 1863 exhibits.
77	Dividends and interest collected by Virginia after June 20, 1863.
78	Map of Virginia and West Virginia.

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80	Quotations on Virginia bonds, stocks, etc.
81	Class C.—Plaintiff's summary of Defendant's exhibits for Class C.
82	Class D.—Plaintiff's summary of defendant's exhibits for class D, 1861 & 1863.
83	Class D.—Act passed March 21, 1866, to provide for funding interest upon the public debt.
84	Class F.—Deed of trust given by the A. M. & O. Co. to the Board of Public Works of Virginia.
85	Plaintiff's recapitulation of assets in classes A, B, C, D, E, F & G, as of January 1, 1861.
86	Plaintiff's recapitulation of assets in classes A, B, C, D, E, F & G, as of June 20, 1863.
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88	Class E.—Plaintiff's exhibits relating to banks.
89	Class E.—Extract from records relating to banks.
90	Statement of old unfunded bonds of Virginia.
91	Class F.—Copy of act relating to A. M. & O. Railroad Co.
92	Class C. & D.—Copy of minutes of the Board of Public Works & Sinking Fund relating to Va. & Tenn. loan.
93	Classes C. & D.—Claim against U. S. Government.
94	Classes C. & D.—Copy of report of Orange & Alexandria R. R. Co. 1861
95	Interest payments and bonds redeemed.
96	Class G.—J. R. & K. Canal, extract report of E. R. Leland, Special Commissioner, etc.
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98	Stipulations and agreements.

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101	Preliminary proceedings.
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1861

Note.—The testimony under each date is so closely related that page references given under both dates should be examined for a complete explanation.

Note.—Page references followed by "E" refer to Exhibit Volume.

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	Note:—See reference under each of the twenty assets included in class C.	
4—**Classes C, Asset No. 1, and D, Asset No. 1.**		
	ORANGE & ALEXANDRIA RAILROAD COMPANY.	
	Defendant's Exhibit No. 3, Asset 1.	
	Showing earnings, profit and loss, book value and dividends	14-15 E
	Showing stock, loan, accrued dividends and interest and disposal	16-18 E
	Hillman—direct examination	97-113
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	Hillman—cross examination	457-463

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5—Classes C, Asset No. 2, and D, Asset No. 2.		
	RICHMOND & DANVILLE RAILROAD COMPANY.	
	Defendant's Exhibit No. 3, Asset 2.	
	Showing earnings, profit and loss, dividends and book value	19 E
	Showing stock and disposal	20 E
	Showing loan, accrued interest, and disposal	21 E
	Defendant's Exhibit "BB."	
	Receipts and disbursements from organization to September 30, 1865	270-273 E
	Receipts and disbursements from organization to September 30, 1866	274-277 E
	Statement of bills payable and resources for the year ending September 30, 1865	278 E
	Liabilities and resources and bill payable for the year ending September 30, 1866	279-280 E
	Hillman—direct examination	113-123
	Hillman—cross examination	366-381
	Hillman—cross examination	389
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	Hillman—direct examination	1066-1067
	Hillman—cross examination	1050-1051
	Hillman—cross examination	1072-1074
	Statement by counsel	1052-1053
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	Hillman—direct examination	118-123
	Hillman—cross examination	463-464
6—Classes C, Asset No. 3, and D, Asset No. 3.		
	RICHMOND & PETERSBURG RAILROAD COMPANY.	
	Defendant's Exhibit No. 3, Asset 3.	
	Showing earnings, profit and loss, dividends and book value	22 E
	Defendant's Exhibit No. 3, Asset 3 (sheet 1.)	
	Showing stock, dividend bonds, accrued dividends, and disposal	23 E
	Hillman—direct examination	123-131
	Hillman—cross examination	381-382

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	Relating to Class D.	
	Hillman—direct examination	126-128
	Hillman—cross examination	465
7—Classes C, Asset No. 4, and D. Asset No. 4.		
	VIRGINIA CENTRAL RAILROAD COMPANY.	
	Defendant's Exhibit No. 3, Asset 4.	
	Showing earnings, profit and loss, dividends, and book value	24 E
	Showing stock and disposal	25 E
	Showing loan, dividend bonds and accrued interest and disposal	26 E
	Hillman—direct examination	131-140
	Agreement—direct examination	148-149
	Hillman—cross examination	385-394
	Relating to Class D.	
	Hillman—cross examination	465
8—Classes C, Asset No. 5, and D, Asset No. 20.		
	BLUE RIDGE RAILROAD.	
	Defendant's Exhibit No. 3, Asset 5.	
	Showing cost, accrued tolls and disposal	27 E
	Agreement—direct examination	148-149
	Hillman—cross examination	394-405
	Hillman—cross examination	411-414
	Relating to Class D.	
	Hillman—cross examination	471
9—Class C, Asset No. 6.		
	ALEXANDRIA, LOUDOUN & HAMPSHIRE R. R. COMPANY.	
	Defendant's Exhibit No. 3, Asset 6.	
	Showing stock and disposal	28 E
	Agreement-direct examination	148-150
	Hillman—cross examination	405-410

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10—Classes C, Asset No. 7, and D, Asset No. 5.		
	WINCHESTER & POTOMAC RAILROAD COMPANY.	
	Defendant's Exhibit No. 3, Asset 7.	
	Showing loan or annuity, accrued interest and disposal	29 E
	Agreement—direct examination	148-150 E
	Hillman—cross examination	415
	Relating to Class D.	
	Hillman—cross examination	465-466
11—Classes C, Asset No. 8, and D, Asset No. 7.		
	VIRGINIA & TENNESSEE RAILROAD COMPANY.	
	Defendant's Exhibit No. 3, Asset 8, (sheets 1 & 2.)	
	Showing loan and accrued interest and disposal	30-31 E
	Agreement—direct examination	148-150
	Hillman—cross examination	418-428
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	Hillman—cross examination	466
	Note:—See references under Class F.	
12—Classes C, Asset No. 9, and D, Asset No. 8.		
	SOUTHSIDE RAILROAD COMPANY.	
	Defendant's Exhibit No. 3. Asset 9.	
	Showing loan and accrued interest and disposal.	32 E
	Agreement—direct examination	148 & 151
	Hillman—cross examination	428-436
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13—Classes C, Asset No. 10, and D, Asset No. 9.

NORFOLK & PETERSBURG RAILROAD COMPANY.

Defendant's Exhibit No. 3, Asset 10.
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Hillman—cross examination..... 436-440
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14—Class C, Asset No. 11.

ROANOKE NAVIGATION COMPANY.

Defendant's Exhibit No. 3, Asset 11.
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15—Class C, Asset No. 12.

ALEXANDRIA CANAL COMPANY.

Defendant's Exhibit No. 3, Asset 12.
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16—Class C, Asset No. 13.

UPPER APPOMATTOX COMPANY.

Defendant's Exhibit No. 3, Asset 13.
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Agreement—direct examination .....148 & 152
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17—Class C, Asset No. 14.

DISMAL SWAMP CANAL COMPANY.

Defendant's Exhibit No. 3, Asset 14.
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Agreement—direct examination .....148 &152
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18—Classes C, Asset No. 15, and D, Asset No. 11.

LOAN TO WASHINGTON COLLEGE.

Defendant's Exhibit No. 3, Asset 15.
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Agreement—direct examination .....148 & 153
Hillman—cross examination 444
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19—Classes C, Asset No. 16, and D, Asset No. 12.

RICHMOND ACADEMY BONDS.

Defendant's Exhibit No. 3, Asset 16.
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Agreement—direct examination .....148 & 153
Hillman—Cross examination 444
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20—Classes C, Asset No. 17, and D, Asset No. 13.

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Defendant's Exhibit No. 3, Asset 17.
Showing claim, accrued interest and disposal.... 41 E
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CLAIM AGAINST SELDEN, WITHERS COMPANY.

Defendant's Exhibit No. 3. Asset 18.
Showing amount realized from claim..... 42-43 E
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Hillman—cross examination 446

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RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD CO.

Defendant's Exhibit No. 3, Asset 19.
Showing dividend bonds, accrued interest and dividends, and disposal ..... 44-45 E
Agreement—direct examination .....148 & 154
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Note:—For "C", Asset 20 see Class "G," Manassas Gap Railroad.

23—Class D.

RECAPITULATION OF ASSETS IN CLASS D.

Defendant's Exhibit No. 4.
Showing accrued interest and dividends January 1, 1861 ..... 46 E
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LOAN TO KANAWHA BOARD OF J. R. & K. COMPANY.

Defendant's Exhibit No. 4, Asset D 10.
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	BANK DIVIDENDS ACCRUED JANUARY 1, 1861.	
	Defendant's Exhibit No. 4, Assets 14 to 19. Showing accrued dividends January 1, 1861 and disposal	47 E
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	FARMERS BANK OF VIRGINIA.	
	Defendant's Exhibit No. 5 (sheet 1). Showing stock, book value, dividends and bank's statement, January 1, 1861	48 E
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	BANK OF VIRGINIA.	
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	BANK OF THE VALLEY.	
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	EXCHANGE BANK.	
	Defendant's Exhibit No. 5 (sheet 4).	
	Showing stock, book value, dividends and bank's statement, January 1, 1861.	52 E
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30—Class E.		
	NORTHWESTERN BANK.	
	Defendant's Exhibit No. 5 (sheet 5).	
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	Defendant's Exhibit No. 12 (10 sheets).	71-89 E
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	Act passed February 3, 1866	187-198 E
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	The following act ratifying sale to A. M. & O. R. Co.,	
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	Act passed February 9, 1882	165-167 E
	The following act showing that reports of banks referred to in record were made under compulsion of law, read into record:	
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Class D.—Interest on loans and dividends on stock accruing prior to January 1, 1861, upon common investments, and collected by the State of Virginia after January 1, 1861, and still unaccounted for.

Class E.—Bank stock purchased by Virginia with joint funds prior to January 1, 1861, and in her possession on that date.

Class F.—Railroad stock purchased by the State of Virginia, out of the common funds of the two states, in various railroads, prior to the first day of January, 1861, and sold by her subsequent to the 20th day of June, 1863, without the knowledge or consent of West Virginia, and for which Virginia has never accounted.

Class G.—Securities purchased with joint funds by the State of Virginia prior to January 1, 1861, and subsequently given away without the knowledge or consent of West Virginia, together with certain other railroad and canal securities appropriated by her in one way or another, but not hereinbefore recapitulated.

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1861.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 2, Original.

COMMONWEALTH OF VIRGINIA

vs.

THE STATE OF WEST VIRGINIA

In Equity.

BEFORE

HON. CHARLES E. LITTLEFIELD,

MASTER.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA
vs.
THE STATE OF WEST VIRGINIA
} *In Equity.*

NEW YORK, *June* 17, 1914.

APPEARANCES:

HON. JOHN G. POLLARD (Richmond, Virginia),
Attorney General of Commonwealth of Virginia.

MR. RANDOLPH HARRISON (Lynchburg, Virginia),
of counsel.

MR. WILLIAM A. ANDERSON, (Lexington, Virginia),
of counsel.

MR. JOHN B. MOON (Charlottesville, Virginia),
(*Chairman of the Debt Commission for Virginia*),
of counsel.

MR. HOLMES CONRAD (Washington, D. C., Winchester, Virginia), and MR. SANFORD ROBINSON (New York).
Attorneys for the Bondholders.

HON. A. A. LILLY (Charleston, West Virginia),
Attorney General for West Virginia.

Mr. John H. Holt, (Huntington, West Virginia), *of counsel.*

Mr. Charles E. Hogg (Point Pleasant, West Virginia), *of counsel.*

Mr. R. L. Gregory (Parkersburg, West Virginia), *of counsel.*

It is understood and conceded that so far as the issues raised by the supplemental answer filed by West Virginia are concerned, that West Virginia has the burden of proof and that West Virginia opens and closes both in the taking of testimony and in the argument of the issues involved in the supplemental answer, it being also understood that this stipulation does not in any way relate to the question of interest or in any way prejudice either of the parties in relation thereto.

The Master: The understanding is that the Master will begin the taking of testimony at Richmond, Virginia, at 10 o'clock on Monday, August 17th, at some convenient place to be selected by the counsel for Virignia, notice of which is to be given to the counsel for West Virginia ten days in advance of the hearing. The parties upon each side, subject to unavoidable circumstances and absolutely necessary delays, are to be prepared to go on and finish the taking of the testimony in a continuous hearing.

No time has been agreed upon for the argument, it being impossible at this stage of the proceeding to determine how much would reasonably be needed by the parties upon either side. The Master makes this suggestion however, that while the arguments in the other case were without limit, he will feel it necessary in this case to limit the arguments, and his tentative suggestion is that the parties had better be prepared by either two or three counsel on either side to make such argument as they think may be necessary, the specific time to be limited by arrangement after the testimony is taken; but meanwhile the attorneys who are to argue can be in condition

where they can be making their tentative and preliminary preparation for argument so that when the time comes they will not need any more time after the testimony is concluded than is absolutely necessary. The time for argument will be divided equally between Virginia and the bondholders and West Virginia. So far as counsel may have occasion to cite authorities or argue authorities which might bear upon any branch of the case, either upon competency of the testimony and its admissibility and the weight to be given to it or upon the main issues of the case, I will expect the counsel upon either side to have a memorandum of all of the authorities upon which they expect to rely in argument prepared and submitted before they begin argument to the counsel on the other side and to the Master, so that the Master can have before him for his future consideration the authorities from each side upon which either party relies and that counsel upon either side will have in advance of the argument the authorities to be relied upon by the other side.

Mr. Harrison: Virginia will ask the Master to pass upon the question of West Virginia's liability for interest on the principal sum found by the Court in its opinion to be due by her, the question of interest being one of the issues distinctly raised by the supplemental answer and referred to the Master for report, and Virginia at this time desires to give notice to West Virginia to be prepared at the hearing to begin on the 17th of August to present such evidence and arguments as she may be advised to present on that question at that time.

Judge Holt: As presently advised the State of West Virginia is of the opinion that the question of interest has not been referred to the Master by the Court; but if the Master and the State of West Virginia should reach the conclusion that such question has been referred, then and in that event West Virginia will be prepared to offer any necessary evidence upon that subject at the same time she offers evidence upon the principal questions.

The Master: The parties will understand that the contentions of either side with reference to the question of interest will be a subject matter of presentation, argument and dis-

cussion before the Master at some time during the hearing beginning on the 17th of August; and so far as evidence relating thereto may be pertinent, the parties may be heard in relation thereto also; the object of the notice given by Virginia being, as I understand it, that West Virginia must be prepared to meet any contention that may be made by Virginia with reference to the question of interest, and will not be in a position at the hearing to ask for any delay when a question of that sort may be raised.

Judge Holt: I so understand.

The Master: While I have suggested that the proof introduced follow substantially the lines of the items mentioned in the various classes which are made an exhibit to the supplemental answer of West Virginia, it must also be understood that if there are any other issues raised by the answer that may not be included in the schedule I shall expect the parties to be prepared upon those issues also. In other words, West Virginia must be prepared not only as to the items mentioned in her schedules but as to any other items that she sets up affirmatively by way of defense in her supplemental answer, if there are any other than those mentioned in the schedules, and the parties upon both sides must of course be prepared accordingly.

Judge Holt: Meaning that we must be prepared at that time upon our whole contention?

The Master: Exactly so, yes, sir; meaning, as suggested by Mr. Holt, that West Virginia and Virginia must be prepared at that time upon their whole contention raised by their supplemental answer. It is suggested by the Master and understood by the parties that the counsel for West Virginia, as they complete their preparation, so far as it may result in computations and schedules, will so far as is possible submit the result of their work from time to time to the counsel for Virginia, and that counsel for Virginia upon the other hand so far as their preparation involves computation and schedules will reciprocate, and that in addition to this the counsel on either side will confer with each other and eliminate by agree-

ment so far as is possible all of the items that may be involved in the controversy, the object of this suggestion being to narrow down the record and eliminate so far as possible every element of controversy.

This will terminate the hearing for this morning as far as the Master is concerned, and he wishes to say that he is very greatly obliged to all the gentlemen present for their attendance and courtesy and effort to make progress and facilitate despatch.

Adjourned to August 17, 1914, at 10 A. M., to meet at Richmond, Virginia.

IN THE

Supreme Court of the United States

COMMONWEALTH OF VIRGINIA
vs.
THE STATE OF WEST VIRGINIA
} *In Equity*

RICHMOND, VIRGINIA, *August* 17, 1914.

APPEARANCES:

HON. JOHN G. POLLARD (Richmond, Virginia),
Attorney General of Commonwealth of Virginia.

MR. RANDOLPH HARRISON (Lynchburg, Virginia),
of counsel.

MR. WILLIAM A. ANDERSON, (Lexington, Virginia),
of counsel.

MR. JOHN B. MOON (Charlottesville, Virginia),
(*Chairman of the Debt Commission for Virginia*),
of counsel.

MR. HOLMES CONRAD (Washington, D. C., Winchester, Virginia), and MR. SANFORD ROBINSON (New York).
Attorneys for the Bondholders.

Hon. A. A. Lilly (Charleston, West Virginia),
Attorney General for West Virginia.

Mr. John H. Holt, (Huntington, West Virginia),
of counsel.

Mr. Charles E. Hogg (Point Pleasant, West Virginia),
of counsel.

Mr. R. L. Gregory (Parkersburg, West Virginia),
of counsel.

Mr. Holt: Mr. Master, what will be our hours of meeting and adjourning?

The Master: We will suspend at one and come in at half past two, and sit until half past five, for the time being, subject of course, if counsel on either side want any change to suit their convenience we will change it.

I will state for the information of the counsel that of course the case undoubtedly will have, before we get through, more or less in the line of schedules; and I have instructed the stenographer as follows, in the first place, as the schedules come in they will be marked as usual; in this case we will mark them Plaintiff's Exhibits 1, 2, 3, etc., and Defendant's Exhibits 1, 2, 3, etc., so that they will be numerically numbered and identified as to party; and whatever is introduced as schedules, if it is an original paper and you want to leave the original paper on file of course that is agreeable to me, on the other hand if it is an original paper and you agree to take a copy that is agreeable, but they are all to be left with the stenographer. Personally, I do not intend to take charge of them. So that when we get all through I am going to depend upon him to be prepared to furnish me all of the schedules that have been introduced into this case. So you will have to look to him if you have to get a schedule after you have introduced it. If you have occasion to get any schedule you will have to go to the stenographer, and I am going to hold him responsible for the exhibits that are filed. I want to be able, when I get

through, to call upon him not only for the transcript but for every exhibit and every schedule that is introduced. I shall hold him responsible for their safe care. Of course it is understood that all schedules and all exhibits are open to the inspection of everybody during the whole course of the trial.

Mr. Holt: We have done this, Mr. Master; every exhibit and schedule that we have prepared, we expect to introduce in the form on which we shall rely. We have had twenty-five blue prints thereof made, so that one may be handed to you, one to the stenographer, and one to each of these gentlemen on the other side, and have enough reserved for our own inspection; and I suppose that after we are through at least one of them will survive the wreck, so that the Master ought to have something to go by.

The Master: Of course I will have mine as I go on, but ultimately I am going to depend upon the stenographer to produce to me all schedules and exhibits actually introduced.

Mr. Holt: We will furnish the Special Master with a bound copy of them, so that there will be no trouble about their order and so on, and they will speak for whatever they may be worth.

CONWAY W. HILLMAN,

called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Holt:

Q. Please give the stenographer your full name?

A. Conway W. Hillman.

Q. Where do you reside, what is your age, and what is your business?

A. I reside at the City of Evanston, Illinois, am 58 years old, and I am President of the Mutual Audit Company and a public accountant by profession.

Q. How long have you been a public accountant?

A. A little over eight years as a public accountant.

Q. What experience have you had as such, what is the extent and the character of that experience?

A. Since becoming a public accountant I have been employed to a very large extent on the different railroad rate cases which have been taking place over the country, with a view of a thorough audit and analysis of railway accounts and books in order to determine various costs and other points which would come up in the various cases and being in dispute. In addition to that we have conducted, that is my firm, the Mutual Audit Company, have conducted various other audits, and investigations of various characters with which I have been familiar as President of the company.

Q. In your experience, what if any connection have you had with the Minnesota rate cases?

A. I was the accountant for the State of Minnesota in the Minnesota rate case.

Q. What experience have you had, if any, in the service of other states in matters involving railroad accounts and the value of railroad stock?

A. I was accountant for the State of Alabama in their two cent passenger rate case, which also involved the commodity

rates on 107 different commodities. I was accountant for the State of Florida in their three cent passenger rate case some years ago and also in several litigations that they have had since, and am now retained by them in a case which is to come before the Circuit Court concerning the freight rate cases on the L. & N. in the State of Florida. I am also employed by the State of Florida to analyze and put on file with the Railroad Commission all of the accounts of the different railroad companies which operate in and out of the State of Florida, and in that their specialty is the investigation of the capitalization of these roads and the amount of value which their stocks represent. I have served the State of North Carolina in both its two cent passenger rate cases, some six years since and in the other rate case which has just been concluded by them. I have served the State of Indiana in their express rate cases, the State of Minnesota again in their express rate cases and again in Minnesota on some railroad rate cases besides the case which is generally understood as the Minnesota rate case. I have served the State of Ohio in the Wheeling and Lake Erie Coal Rate cases. I served the State of New Jersey in their proposed but not yet carried out telephone rate cases. I have served the State of Missouri as a consulting accountant for the firm of Haskins & Sells, which had charge of their railroad rate cases. I mean by that consulting with that firm, not as their employee. I have served the State of Arkansas in the same way and with the same firm. I have served the State of Kentucky in their raidroad rate cases. I have served the States of both North and South Dakota in their various railroad rate cases and have been in consultation on a large number of cases of private individuals against railroads wherein the matters were taken up. I also served the State of West Virginia in their two cent passenger rate case, which I had overlooked in making my statement. I have also served the City of Jacksonville in the audit and systemization of their city accounts; and besides that have been engaged in a number of smaller audits and investigations of a commercial and financial character, but my principal and heavy business, as I have stated, has been in the investigation of railroad accounts and the determination of costs.

Q. Mr. Hillman, in your experience as an accountant in the way you have described, tell the Master whether or not you have had an opportunity or it has been your business to investigate from the records and activities of the various railroad companies, the question of the value of their stocks?

A. Yes, sir, it has in a number of cases.

Q. You may tell us whether or not you have examined the records of the Commonwealth of Virginia for the purpose of ascertaining the amount of cash in the hands of the Treasurer of that Commonwealth from the 1st day of January, 1861, and the distribution of such amounts if any among the various funds to which it is credited?

A. Yes, sir, I have.

Mr. Harrison: Mr. Master, I think we may have it understood that any objections which we may desire to offer to the introduction of the testimony of this witness shall be understood as not waived because we do not make them as we go along, but that all rights for that purpose are reserved.

The Master: No objection to that I suppose?

Mr. Holt: I think that is entirely proper, Mr. Harrison; I think that ought to be understood.

The Master: It will be understood that the competency of any of the testimony as offered, even though the question may not be raised at the time it is introduced, will be open to the parties on either side upon final argument. I shall expect simply that either side will call my attention specifically to matters of that sort that they rely upon, in their briefs.

Mr. Harrison: Either competency or relevancy or materiality?

The Master: Certainly. The main question will be whether a certain piece of testimony is proper to be considered by me in connection with a particular proposition. That will be open from the beginning until the end, but I want counsel on either side to be very careful to call my attention specifically to what they rely upon in that regard in the briefs which they submit to me before the case is concluded.

Q. What books, Mr. Hillman, upon this question did you examine?

A. Literary Fund Ledger.

The Master: Have any of these schedules been submitted to the counsel on the other side, in accordance with the suggestion made at our preliminary hearing, Mr. Holt?

Mr. Holt: They have not, your Honor, for the simple reason, laboring under difficulties that we have had, some of these schedules were not completed until five o'clock this morning. I have not been in bed more than thirty minutes since yesterday, so we have just done the best we could.

The Master: That is a sufficient answer. The only purpose of my inquiry was that if they had been and if any large number of these were agreed upon, of course it would eliminate the necessity for examination; under the circumstances of course you have not, and you can only go on as you do.

Mr. Holt: I believe that we will get together on a good many.

The Master: Yes. We can take our time about that, but meanwhile proceed *de bene.*

Mr. Holt: I asked the witness a question about what books he examined, and before he had completed his reply I broke in with another question.

Q. Complete your answer if it were not finished.

A. In addition to the Literary Fund Ledger which I have just mentioned I examined the Literary Fund Journal; I examined the Board of Public Works Ledger B, which Board of Public Works Ledger, is often denominated Internal Improvement Fund Ledger, the terms seeming to be used frequently interchangeably. I examined the Commonwealth Fund Ledger that is kept in the First Auditor's office of the State of Virginia, all of the others being kept in the Second Auditor's office. I examined the Sinking Fund Ledger No. 1, and from these sources I obtained the information which is set out in the exhibit which will be filed later.

The Master: Better refer to that by number as we go along, which is a thing sometimes overlooked in the hurry of a trial. When counsel is inquiring about a paper it will be just as well to identify it so that neither of us will have any trouble in locating the testimony. I make such suggestion

now, so that this will probably I suppose be Defendant's Exhibit No. 1.

Mr. Holt: I will ask a question which will absolutely identify it.

Q. What did you ascertain to be the amount of cash on hand in the Treasury of the Commonwealth of Virginia from the 1st day of January, 1861?

A. At the opening of business, January 1, 1861, the amount of cash on hand in the Treasury of the State of Virginia amounted to $1,102,036.16.

Q. What part of that did you find if any in the Literary Fund?

A. I found in the Literary Fund of State funds $23,985.18. In addition to this amount and in addition to the total amount I have mentioned, there was in the Treasury of the Literary Fund $2,890.90 of the so-called Dawson fund, which is a trust fund and not a State fund, but is in the custody of the Literary Board.

Q. What of that amount, if any part thereof, did you find in the Board of Public Works Fund?

A. $5,958.28.

Q. What in the Commonwealth Fund?

A. $252,842.67.

Q. What if any in the Sinking Fund?

A. $819,250.03.

Q. Have you prepared a schedule or tabulated statement showing the amount of cash on hand at the date named, and the distribution thereof between the various funds?

A. Yes, sir, I have prepared such a statement?

Q. How have you marked that statement?

A. Exhibit Hillman No. 1 on the upper right hand corner, and on the upper left hand corner, Class A, to identify it with the supplemental answer of the State of West Virginia in this case.

Q. Will you file this exhibit with and as a part of your testimony, marked Exhibit Hillman No. 1?

A. Yes, sir, I so file it.

The Master: Do you want to make this your first exhibit, Mr. Holt?

Mr. Holt: Yes, sir.

The paper was admitted in evidence and marked Defendant's Exhibit No. 1, August 17, 1914, C. B.

Q. You may state whether or not the exhibit you have filed states the book and page in each instance from which you have made up the exhibit.

A. Yes, sir, it does. Perhaps I had better further state that in the case of the Literary Fund the postings are made at intervals, and the interval at which the posting was made overlapped the date; therefore the amount would not show on the ledger, and it was necessary for me to take the receipts and disbursements for the quarter from October 1 to December 31, 1860 add them, and deduct them from the balance shown on September 30, 1860, in order to arrive at the correct balance December 31, 1860, or at the opening of business on January 1, 1861.

Q. You may state whether or not Defendant's Exhibit No. 1, so filed by you correctly states the result of your examination of the records of the Commonwealth of Virginia and truly presents the state of the cash account on the date named.

A. It is correct, and shows this account as stated on the books of the State of Virginia.

Mr. Holt: Now, your Honor, we might as well raise the question right here, in order that there may be no misunderstanding about it. Of course we can go downstairs here and bring certified copies of those books, if these gentlemen or the Master should require it; but we do not want to be put to that expense and trouble unless some point is made of it. We might not even then come under the rules of evidence, on account of there being various books, and all that sort of thing —but we wanted to have some understanding. On each of these exhibits we have given the book and the page, so that it may be easily verified, and the correctness of his result checked. But if the Master should require us now to file instead of that exhibit, or along with the exhibit, certified copies of these books, of course we will go and get them. But we deem it to

be sufficient, the exhibit showing the result, and the sworn testimony of a competent accountant who has examined the books.

The Master: Unless some question is raised as to the accuracy of the result, which involves an inspection of the original books, so far as I am concerned I do not want to be bothered with the books. Of course it is going to be open to both sides to go to the original sources. My own notion is that after Mr. Hillman submits the results of his work, and while it is going on, it will probably be verified by the other side, and if there is any question about its accuracy that involves an inspection of these books, to my mind that is a matter that might involve perhaps their examination. Of course I do not imagine that the other side care anything about the books except to be satisfied that these results are accurate. Subject to that suggestion, as far as I am concerned I have no occasion to examine the books. In the first place, if you agree, that eliminates all controversy. If you do not happen to agree and there is anything about the books that will aid me in determining any controversy between you, of course I will look at the books. Will that be agreeable?

Mr. Harrison: So far as the introduction of the original source from which the exhibits are prepared, as a matter of course we reserve the right upon cross-examination to test the accuracy of the exhibits, and if it be necessary to refer to those original sources then of course we will do it. And if not we will not. There is no necessity now, as Judge Holt suggests, for them to take upon themselves the labor and trouble of introducing those original records.

The Master: Or copies of them?

Mr. Harrison: Or copies of them?

The Master: Subject, of course, to any controversy that may arise.

Mr. Holt: Then we will go to the original source, of course.

The Master: You want the question settled that there is no question raised about the accuracy.

Mr. Holt: Yes, and of course the materiality is always subject to challenge. Now, before passing to Exhibit No. 2,

your Honor, I wanted to make an inquiry, and that is whether or not these gentlemen would like to cross-examine on Exhibit No. 1 now, or whether they prefer to wait until we get all of the exhibits in. It is just a question of their convenience.

The Master: What have you to say about that, Mr. Attorney General and Mr. Harrison?

Mr. Harrison: I think so far as this particular exhibit is concerned we might dispose of it by a brief cross-examination at this time, but inasmuch as other exhibits are to be introduced which may involve some consideration and conference on our part before we attempt to cross-examine, we would prefer to have the whole case put in.

The Master: That is, before you begin to cross-examine at all you would like to have the other side put in their whole case?

Mr. Harrison: Yes.

The Master: That I suppose is agreeable?

Mr. Holt: Yes, it is just a question of what they prefer.

The Master: Have it understood, Mr. Harrison, so far as you can, that when you come to cross-examine you will exhaust each class as you go on.

Mr. Harrison: We shall have that in view.

Mr. Anderson: At times there may be such connection between these exhibits that we cannot anticipate what we may desire to ask until they are all in..

Q. Mr. Hillman, have you examined the books and records of the Commonwealth of Virginia with the view of ascertaining whether or not it owned on the 1st day of January, 1861, and immediately prior thereto any stock in the Richmond, Fredericksburg & Potomac Railroad Company and with a view of ascertaining in the event it did have such ownership, the extent thereof?

A. Yes, sir, I have.

Q. You may state whether or not the State of Virginia owned any stock in the Railway Company on that date.

A. It owned, according to its books, 2,752 shares of the par value of $100, each, making a total par value of $275,200. This is shown on page 17, ledger B, Second Auditor's office.

Q. Second Auditor's office I suppose of the Commonwealth of Virginia?

A. Of the Commonwealth of Virginia, yes, sir.

Q. You may state whether or not the records of that State show any disposition of that stock at any time or whether or not it is still owned by the State of Virginia.

A. It is still owned by the State of Virginia.

Q. Where are the general offices of the Richmond, Fredericksburg & Potomac Railway Company located?

A. In the First National Bank Building, City of Richmond, Virginia.

Q. Have you or have you not examined the records of that company with a view of ascertaining therefrom the book value of that stock as of the 1st day of January, 1861?

A. Yes, sir, I have examined the records of that company with a view of ascertaining the book value of the stock as of the date mentioned, January 1, 1861.

Q. What did you ascertain therefrom to be the book value of that stock on the 1st day of January, 1861, that is the value per share?

A. I found that the value on March 31, 1860, was $148.40 per share; that the value on March 31, 1861, was $150.40 per share; that there was no trial balance on these records as of date of December 31, 1860, whereby the exact value could be determined on that date; but that the stock advanced in value in twelve months two points, from $148.40 to $150.40. I have assumed that the value would grow according to the time, and that therefore three-quarters of this increment should be added to the value of March 31, 1860, in order to determine the value January 1, 1861. This brings the value to $149.90 per share, so I have called it $150. per share on this exhibit.

Q. Taking that as the actual value of the stock as of January 1, 1861, what would be the full actual value of the entire holding of the Commonwealth of Virginia in the stock of that Company on that date?

A. $412,800.

Q. What books, papers, or records of the Richmond, Fredericksburg & Potomac Railway Company did you examine with a view of ascertaining the matters you have stated?

A. From the official credit reports of this Railroad Company on file in bound volumes in the Treasurer's office in Richmond, Virginia?

Q. Have you prepared a schedule or statement showing the result of your examination of these books?

A. Yes, sir, I have.

Q. What have you marked it?

A. Defendant's Exhibit No. 2.

Q. Or do you call it Exhibit Hillman No. 2?

A. Exhibit Hillman No. 2 in the upper right hand corner, and in the upper left hand corner, Class B, in order to identify it with the class in the supplementary answer of West Virginia.

Q. Does that schedule or statement correctly show the actual value of the stock of that company as of the date named as appears from the books of that company?

A. Yes, sir, I should say that it did.

Q. Will you file the exhibit referred to as Defendant's Exhibit No. 2?

A. Yes, sir, I so file it.

The paper was admitted in evidence and marked Defendant's Exhibit No. 2, August 17, 1914, C. B.

Q. Will you tell the Master, please, how you arrived at the actual value per share of that stock from the books of that company as of January 1, 1861, and illustrate the thing from the exhibit you have filed if you can.

A. I have arrived at that value by dividing the outstanding capital stock into surplus as shown by the books of the company. On March 31, 1860, outstanding stock was $1,043,700.; the surplus was $505,403.22 or 48.4 per cent. of the capital stock. Therefore the stock was shown to be of a book value of $148.4.

Q. That was for what year?

A. 1860, March 31.

Q. What for 1861?

A. For the year ending March 31, 1861, there was outstanding $1,116,100. of stock. The surplus was $562,819.05, making a book value of $150.4.

Q. Did you make an examination, and if so do you show it upon this exhibit, the book value of this stock for the year 1862?

A. Yes, sir. The book value March 31, 1862, was as follows: Outstanding stock $1,142,900; surplus $656,577.85; book value $167.4.

Q. You may tell us whether or not you examined the records of this company for the purpose of determining whether or not it declared any dividends upon this stock in the year 1861 and in the years immediately preceding and the years immediately succeeding that date.

A. Yes, sir, I examined the books of the company to see whether or not dividends had been declared upon the stock.

Q. What period, Mr. Hillman, did you cover in this dividend examination, beginning with what year and ending with what year?

A. I commenced the year 1850 and ran it up to 1864, and entered it upon this exhibit.

Q. What were the dividends declared by this company on its stock in the years 1850, 1851, 1852 and 1853, what rate I mean?

A. 7 per cent. paid in cash each year.

Q. What in the years 1854 and 1855?

A. In 1854 the dividends were 7 per cent., paid 3½ per cent. in cash and 3½ per cent. in bonds, which were called dividend bonds and were afterwards redeemed, as will be shown in our subsequent schedule, at par, having in the meantime paid interest.

The Master: Interest in full?

The Witness: Yes, sir.

The Witness: In 1855 there was seven per cent. paid on this stock in bonds which were afterwards redeemed as the amount in prior years.

By Mr. Holt:

Q. Well, go ahead with the dividends, please?

A. From 1855 to 1859 there were no dividends paid on the $1,000,000 common stock outstanding. They did, however, pay a dividend of seven per cent. upon the preferred stock which was outstanding, which is the amount of stock shown on this exhibit above $1,000,000. I have made a notation to that effect, but I did not carry out the amounts for the reason that the stock would be issued at different times during the year, and the computation made from that to the dividend date as to when it should be paid, and it would be a very confusing matter to follow that, when you can make the general statement and cover it by stating that on the preferred stock they treated it as an interest obligation and paid it at the rate of seven per cent. per annum. In 1859 they paid seven per cent. in bonds; in 1860 they paid seven per cent in bonds; and all of these bonds which I have mentioned were afterwards redeemed at par, and having paid interest regularly in the interim. In 1861 there was a dividend declared of three and one-half per cent. but it was not paid until 1873, and then after a law suit. This fact has been noted upon this exhibit. In 1862—

The Master:

Q. How was it paid then, interest on the dividend?

A. Paid in cash, sir.

Q. But was the principal sum paid only, or was the amount of the dividend with interest up to 1873 paid?

A. The amount of the dividend with interest and costs.

Q. Up to 1873?

A. Yes, sir. I will state from 1866—they commenced for some reason in that court business to accrue interest in 1866 instead of back as far as this date, and paid it at that date.

Q. The interest did not run clear back to 1861?

A. No.

Q. But commenced in 1866?

A. Commenced the latter part of 1865 or the first part of 1866, I am not quite sure which.

Q. And from that time on up to the termination of the litigation the interest and costs were paid in full?

A. Yes, sir.

Q. At what rate of interest?

A. Interest at 6 per cent.

The Master: Excuse me from breaking in.

Mr. Holt: I am glad you did.

By Mr. Holt:

Q. Well, go ahead with the dividends, Mr. Hillman?

A. In 1862 there were 5½ per cent. dividends declared, paid in cash; in 1863 there were 26½ per cent. dividends paid in cash; in 1864 there were 13 per cent. dividends paid in cash; the whole period covered in this is fifteen years in which there were 104½ per cent. paid in dividends or almost exactly seven per cent per annum.

Q. From what period to what period?

A. From the year 1850 to 1864; both inclusive.

Mr. Holt: Now again, at this point, your Honor, it is the same question and I do not want to annoy or disturb by repetition, but in order that we may get it clearly on the record, if demanded by our friends upon the other side or by the Master particularly, if they want us to bring these annual reports of the Richmond, Fredericksburg & Potomac Railroad, the volume and page of which is shown upon the exhibit, we will do it; but not unless requested or required.

The Master: As I understand it, there will be no occasion to do that unless the accuracy of it is challenged, and the figures will be accepted as competent proof in the absence of the original.

Q. I notice, Mr. Hillman, from your Exhibit No. 2, just filed, in ascertaining the book value of this stock you use in one column the amount of outstanding stock, in the next following column surplus, and in the third column following book value. What do you mean by surplus there?

A. I mean the amount that remains on hand of assets after deducting all liabilities outside of the capital stock, all bonds and current accounts owed are deducted from the assets which

they have on hand in the way of cash, moneys invested in the loan, supplies on hand and other items of that character. In other words the differences between the assets and the liabilities are taken and divided up amongst the stockholders.

By The Master:

Q. In order to get your surplus you have also deducted your capital stock, have you not?

A. Yes, sir.

Q. And after deducting your capital stock you have left so much surplus, is that right?

A. Yes, sir.

Q. Inadvertently I understood you to suggest that you had not deducted your capital stock, but you do have to deduct your capital stock to get your surplus?

A. You have to add to your percentage of surplus 100, which represented the stock itself.

Q. In other words, after allowing for all the indebtedness outside of the capital stock, you had on hand not only the capital stock but the surplus also, that is what you mean, is it not?

A. Yes, sir.

By Mr. Holt:

Q. Now then, Mr. Hillman, dividends, had they or had they not been declared before you ascertained the amount of surplus? In other words from the books of this company did they affect or diminish in any way this surplus by the declaration of dividends thereout?

A. That I am unable to answer. The companies frequently pay the dividends and treat them as an outstanding obligation.

By The Master:

Q. Now you say the companies, do you mean this company?

A. The railroad companies, railroad companies as a general proposition.

Q. What about this particular company?

A. I do not know whether they had at that time declared this dividend or not; but by notation—

Q. Do not the books of the company show the date of the declaring of the dividends?

A. Yes, sir.

Q. Well, now was that date before or after the date to which the surplus is computed?

A. I can solve that, your Honor.

The Master: That is what Mr. Holt wants.

Mr. Holt: That is the idea exactly.

The Witness: In this computation the dividend has been practically eliminated from the value of the stock as if it had already been declared, for the reason that it happened to be paid in dividend bonds which were taken up as a liability of the company, and therefore being practically deducted from the amount of the surplus.

Q. But you have quite a number of cash dividends and the real question as I understand it is, if I am right about it, whether or not after the dividend was declared there was still on hand the surplus that you have indicated on the dates you have given. Do I make that clear?

A. There would not be in the case of a cash dividend.

Q. Then was a cash dividend declared after the computation of the surplus was made, so that when the dividend was paid it would reduce the surplus to that extent, is that what you mean?

A. Yes, sir, but unfortunately the dividend dates and the fiscal year dates are not coincident.

Q. That all may be, but if the dividend date was subsequent to the date to which the surplus was computed, to ascertain the real surplus and the dividend you would have to add the dividend to the surplus?

A. Yes, sir.

Q. Can you give us the dividends that were declared on the various dates as to which you have computed surplus?

A. Yes, sir.

The Master: You can draw that out. I would like to have the counsel feel that if I make any suggestion or inquiry, if it disturbs the progress of your case, say so, on either side.

Mr. Holt: Not a particle, your Honor; all we want is the whole truth and nothing but the truth.

The Master: If in any way any suggestion I make disturbs counsel on either side in the presentation of the case, why you need not hesitate to say so, and I will simply subside and let you work it out in your own way.

By Mr. Holt:

Q. You may state whether or not, Mr. Hillman, this surplus was made up out of an accumulation of profits out of which no dividends were declared, if you can?

A. Yes, sir, it was made up by an accumulation of profits after paying the dividends.

By The Master:

Q. Do you mean by that that this surplus, for instance, of March 31, 1859—no, I will take March 31, 1860—that the surplus was made up after the preceding dividend had been declared, or after the dividend of 1862 was declared? Do I make that clear?

A. Yes, sir, you make it clear. I have not examined to see whether or not that dividend had been taken out.

Q. That is easily ascertainable from the books, is it not?

A. Yes, sir. As a general proposition I should say that the latter dividend, the last dividend declared had not yet been taken out of that stock. I could not tell—

Q. You mean had not been taken out of the surplus?

A. Out of the surplus. I could not tell until I have looked at the date of the dividend and the date of its payment.

Q. That you can verify without any difficulty?

A. Yes, sir, without any difficulty.

The Master: I do not know whether it may be material, but if there is any question about it you ought to have the fact as it actually exists; and a little later, if there is no objection Mr. Holt, the witness may state that as part of his testimony, so as to have it all together. State it in each instance. I suppose what is true as to one instance is true of all instances.

By Mr. Holt:

Q. I will ask you to explain, Mr. Hillman, in your own way to the Master, and in general terms, how you arrived at the

book value of this stock for the year 1861, January 1st?

A. I took the book value of the stock on March 31, 1860, which was 148.4. I then took the book value of the stock March 31, 1861, which was 150.4. The stock had increased in value then in this year two points, or 2 per cent., on its par. Up to December 31, 1860, nine months, or three-quarters of this year, had elapsed. I assumed that the value of the stock had progressed from month to month.

By The Master:

Q. In the same proportion?

A. In the same proportion.

The Witness: And took three-fourths of the two per cent. advance, which was 1.5 per cent., which I added to the book value of March 31, 1860, of 148.4, which gave a value on January 1, 1861, of 149.9, or as I have used it, 150.

By Mr. Holt:

Q. That is based upon book value of 1860?

A. Yes.

Q. How did you ascertain the book value of 1860?

The Master: State the factors that enter into the book value on the books of the company.

The Witness: The outstanding capital stock—

The Master: The various factors that enter into the book value.

The Witness: The outstanding capital stock on March 31, 1860, was $1,043,700. The surplus was $505,403.22. Applying the surplus to the capital stock gives us a surplus on the capital stock of 48.4 per cent., which added to its par value of 100, makes its value 148.4.

Q. Mr. Hillman, does the ascertainment of the book value of the stocks involve a comparison of the assets and liabilities of the company?

A. Yes, sir, the surplus is always the difference between assets and liabilities.

Q. Then in order to arrive at the book value of stock you institute a comparison, as I understand you, between the assets and the liabilities?

A. Yes, sir.

Q. And what you mean by surplus is what you have left after the assets have been applied to the liabilities?

A. Yes, sir.

The Master: Treating the capital stock as a liability?

The Witness: Yes, sir; it is what is left over.

Mr. Robinson: I suppose the Judge is talking about the book value of the assets and the book value of the liabilities?

The Master: I understand it so.

Mr. Holt: Yes. You will find in these exhibits, Mr. Robinson, that these reports of officials and boards of directors are sworn to, and they state their assets at so much, if I may be permitted to make the statement, and their liabilities at so much, and he takes those records. Now, if they have overvalued the assets or if they have underestimated the liabilities, that of course is for you gentlemen to inquire into.

The Master: If Mr. Hillman has it right handy, how would it do to insert right here in the record the list of the assets upon which this book value is predicated? If he has not it, he need not bother to do it. If it is too long, why then he need not bother, but this would be the natural place to look for it in the record.

The Witness: No, your Honor, I have not taken them off in detail for those years. It can be done, and I will agree if your Honor desires, to furnish a copy of Sheet 2 on this exhibit.

Mr. Holt: Of Exhibit No. 2.

The Witness: Of Exhibit No. 2, and it would probably be some statement of some twenty items on each side.

The Master: I would like to have that made a part of the record. I suppose the other side may have occasion to examine into that, but you may submit that as Sheet No. 2, of Exhibit No. 2.

Mr. Holt: We will do that, your Honor. I think in the exhibits to follow that all of those details, assets and liabilities, are set up in the exhibits. I do not mean in the case of this particular company.

The Master: You mean in connection with other items?

Mr. Holt: In connection with other items, yes, sir.

Q. I have but one general question to ask you on this matter, Mr. Hillman, whether or not the Exhibit No. 2 just filed by you correctly and truly represents the result of your examination of the books of this company?

A. Yes, sir, it does.

Mr. Holt: Now, your Honor, so far as we are concerned that is all I believe we care at the present time to ask about Exhibit No. 2, and we could go on except that they are blue printing the next set, and we won't have them for a few minutes, so if it is agreeable to your Honor to adjourn until the afternoon we will be ready with them then.

The Master: Then we will suspend here until two o'clock.

Mr. Holt: I think the other exhibits will be ready at that time.

Mr. Robinson: I suppose Mr. Hillman will be glad to tell Mr. Potter the pages where the dividends are found, for the purposes of cross-examination.

The Master: Yes. I do not see any objection to the accountants on either side conferring with each other as to all these details so as to facilitate the progress of the case.

At this point a recess was taken until 2 P. M.

AFTER RECESS.

Mr. Holt: Your Honor, we have one suggestion to make that we made this morning, but nothing was done with it, however. We have put in our schedule that covers Class A, that is, the cash on hand; we have put in our schedule, Class B, which is the ownership in the stock of the Richmond, Fredericksburg and Potomac Railroad Company, just following them along as your Honor suggested; but each one of those things is a complete item in itself; and if these gentlemen could cross-examine on schedule A when we get done with it, and lay the chief examination and cross-examination aside as a completed class, we would be very glad indeed. Likewise with Class B, when we introduce such evidence on the value of the stock embraced in that and exhibit our schedule, if they will

cross-examine on that, and then lay that upon one side and have the whole evidence upon that class complete; and then go on to C and D, etc., without the necessity of coming back to all of then in the end.

The Master: Do you have any oral testimony to submit under Class A, I mean in addition to Mr. Hillman's testimony, of course?

Mr. Holt: No, we have not.

The Master: So far as you have oral testimony in the various classes, you contemplate putting it in when you reach the class, I suppose.

Mr. Holt: Yes.

The Master: That suggestion is agreeable to me; and the counsel for Virginia, of course I should be inclined to consult their convenience; but this suggestion could be made, if it is agreeable to them they could take up the cross-examination on the schedule as they go in, with the understanding that if they have any desire to resume the cross-examination that can be done at any time, or if they prefer to wait until they all go in they may take that course. I feel like consulting their convenience about it.

Mr. Harrison: As I stated this morning, if your Honor please, it would not be either convenient or satisfactory to us to attempt to cross-examine the witness or witnesses as they deal with the respective items. It is very important from our point of view that we may have the benefit of their entire case; and we are not at all sure but what the examination may be facilitated by that course rather than by attempting at once to embark upon the cross-examination of a witness in reference to an item about which he has just testified, without the opportunity to consider it, its bearing, and how far we may care to cross-examine.

The Master: I am inclined to be governed by your suggestion at present.

Mr. Harrison: And we would prefer that the case might be conducted in the manner in which it is now going on, with the assurance that we will expedite the cross-examination in every possible way.

The Master: Of course both sides understand that while generally speaking we are governed by the ordinary legal rules, these legal rules are not enforced to embarrass anybody, and at any time during the progress of the hearing it is going to be open to either side to put into the case anything that they may have omitted, even though technically speaking they may have put in the case in chief.

Mr. Harrison: I might say in respect to one of the schedules that has just been gone over in chief, that we are not in possession of some of the data that has been suggested by the examination, and we will want to look into it and inform ourselves about it.

The Master: Then, Brother Holt, we will go on as we have been going, if there is no objection.

Mr. Holt: We have put in, your Honor, Schedule No. 1, Exhibit No. 1, covering Class A; likewise Exhibit No. 2, covering Class B. Now, it is our purpose of course to come to Class C and then to Class D. But we find that the blueprints on those are not quite completed, so that with your Honor's permission we will jump to Class E with our exhibits.

The Master: That is perfectly satisfactory, Mr. Holt, and I take it, satisfactory to the other side.

Mr. Harrison: Yes.

Continuation of the direct-examination of

CONWAY W. HILLMAN.

By Mr. Holt:

Q. Mr. Hillman, have you examined the records of the State of Virginia with a view of ascertaining how much stock, if any, that is the number of shares therein, that the State of Virginia owned in the Bank of Virginia, on the 1st day of January, 1861?

A. Yes, sir, I have.

Q. How many shares of stock, as shown by the records of that state, did she own in that bank at that time?

A. 13,766 shares, at the par value of $70 per share.

Q. How many of those shares were credited to the Literary Fund?

A. 2,121 shares, par value of $148,470.

Q. I will ask you about the value later on.

A. Very well.

Q. How many shares of that number were credited to the Board of Public Works Fund?

A. 8,395 shares.

Q. How many to the Commonwealth Fund?

A. 3,250 shares.

Q. Where do you find the authority for saying that 2,121 of those shares were credited to the Literary Fund?

A. Page 13, Literary Fund ledger.

Q. Where, that 8,395 are credited to the Board of Public Works Fund?

A. Page 319, ledger B, Second Auditor's office.

Q. Where, that 3,250 shares out of that sum total were credited to the Commonwealth Fund?

A. There is no record on the Commonwealth Fund ledger on that date of these shares of stock. I would say that that ledger is exceedingly incomplete in a great many particulars, but, however, page 57, journal K-K of the Treasurer, shows the payment of dividends of 3½ per cent. declared January 1, 1861, on $227,500, and paid to that fund.

Q. How many shares would that be dividends declared on?

A. 3,250 shares.

Q. Then you infer from that, as I understand you, that 3,250 of these shares were credited to the Commonwealth Fund?

A. Yes, sir, and from the further fact that in ledgers, both prior to that and subsequent to that date, the same amount shows on the ledgers.

By the Master:

Q. You mean by that that there is an account on the ledgers that discloses that entry prior and subsequent, but does not disclose it on that date?

A. Yes, sir, that is what I mean. On the ledger which covers that period there is a blank space, evidently erased for some reason or other for that, or a blank—I will withdraw that remark "erased," because it was not erased, it was simply a blank space opposite that entry, but the dividends were drawn by this same fund on that same amount on that date, and there is no entry on the journal to show that that had been disposed of at that time and then acquired afterwards, and there is no entry to show either a disposal or an acquisition, therefore the assumption must be that it was on hand.

Q. That is the accounts in the ledger that you find show in the preceding year the entry?

A. Yes, sir.

Q. And in the succeeding year a similar entry?

A. Yes, sir.

Q. But in the intervening year there does not appear to be any entry?

A. Yes, sir, but a dividend paid on that date on that stock. As I said before, I would like to emphasize the fact that that ledger is quite incomplete, which prevented me from presenting a full trial balance of the books of the State of Virginia on that date.

Q. What was the par value per share of that stock of the Bank of Virginia?

A. $70.

Q. Did you undertake to ascertain the actual value of that stock per share as of January 1, 1861?

A. Yes, sir, I did.

Q. What did you ascertain it to be as of that date?

A. $78.75 per share. I would say in that that I omitted a very minor fraction at the end of that computation and made it round figures.

The Master: Does this mean, Mr. Holt, book value or actual market value?

Mr. Holt: I mean the book value. I am going to show that in a moment.

The Master: You have a line of inquiry predicated on book value all the way along?

Mr. Holt: Yes, sir.

The Master: And this is the book value as distinguished from the actual market value?

Mr. Holt: Yes.

By Mr. Holt:

Q. You mean $78.75 per share that 'that was the book value per share, do you, Mr. Hillman?

A. I do, yes, sir.

Q. Was there any dividend declared on the 1st of January, 1861, on this stock?

A. Yes, sir, a dividend of $3.50 for every hundred dollars, or $2.45 for every share of stock.

By the Master:

Q. Was that a three and a half per cent. dividend?

A. Yes, sir.

By Mr. Holt:

Q. Have you deducted that $2.45 from the book value of each share of stock?

A. Yes, sir, I have.

Q. What does that leave you?

A. $76.30 per share.

Q. Now, what does the $76.30 represent?

A. It represents the par of the stock, plus the undivided profits.

Q. Does it or does it not represent the book value of the stock as of that date, less the dividend declared on that date?

A. It does.

Q. Why do you deduct the dividend of January 1, 1861, from the book value of the stock?

A. Because under Class D we have shown that dividend as a claim.

Q. Against the State of Virginia?

A. Against the State of Virginia.

Q. So this deduction then is made to the end that you may not make the claim a second time; is that so?

A. That is correct.

Q. Now, Mr. Hillman, I wish you would explain to the Master how you arrived at the book value of $78.75 gross and $76.30 net per share, as of January 1, 1861. How do you get those figures?

A. I took the total assets of the bank as shown in the report of the officers of this bank, on page 6, document 14, of the annual report of the Auditor of the State for the year 1861, on file in the Second Auditor's office, and marked Vol. 2. From that I deducted the liabilities of the bank outside of capital stock and profit and loss. I then divided the capital stock into the balance, and found that it yielded $78.75 per share as the value.

Q. And from that you deducted the dividend as before described?

A. Yes, sir.

Q. Now, Mr. Hillman, in ascertaining the book value in the exhibit that you will file, have you set forth the assets of the bank and the liabilities of the bank in detail?

A. Yes, sir, I have.

Q. Whence did you derive those assets and those liabilities?

A. From the printed report of the Auditor of the State for 1861, wherein he sets forth the report of the officers of this bank, under oath, as to its condition on January 1, 1861. This is set forth on page 6, document 14, of the State Auditor's report of that date.

Q. You may now state whether or not you examined either the records of the State of Virginia or the records of the Bank of Virginia, the corporation under inquiry, with a view of ascertaining whether or not it declared any dividends in the year 1861 and prior thereto and subsequent thereto, and if so the amount of such dividends; have you made such examination?

A. Yes, sir, I have.

Q. What records did you examine for the purpose of ascertaining the dividends declared and paid, the records of the bank or the records of the State of Virginia?

A. The records of the State of Virginia were the most convenient for me to examine and I examined them, wherein is shown the amount of stock outstanding and the percentage of the dividends which they received from the banks.

Q. What years did you cover in your examination upon the subject of dividends?

A. From 1856 to 1863.

Q. What dividends were paid in the year 1856 as shown by this record?

A. Eight per cent. of the par value of the stock, or $5.60 per share.

Q. What dividend was paid in 1857?

A. 7½ per cent. on the par value of the stock, or $5.25 per share.

Q. What in the year 1858?

A. 7¼ per cent. on the par value of the stock, or $5.075 per share.

Q. What in the year 1859?

A. 7¼ per cent. on the par value of the stock, or $5.075 per share.

Q. The year 1860?

A. 7¼ per cent. on the par value of the stock, or $5.075 per share.

Q. The year 1861?

A. 7 per cent. on the par value of the stock, or $4.90 per share.

Q. 1862?

A. 7 per cent. on the par value of the stock, or $4.90 per share.

Q. 1863?

A. 5½ per cent. on the par value of the stock, or $3.675 per cent.

Q. Have you prepared a tabulated statement or schedule showing the result of your examination of the records of Virginia and the books of this bank as you have detailed it?

A. Yes, sir, I have.

Q. How have you marked it?

A. I have marked it Hillman Exhibit No. 5 in the upper right hand corner, and Class E in the upper left hand corner.

Q. Then it really is Class E, Hillman Exhibit No. 5, is that correct?

A. Yes, sir.

Q. Will you now file this schedule as a part of your deposition and mark it Defendant's Exhibit 5, No. 1?

A. Yes, sir, I now so file, marking it in the way you have indicated.

The paper was admitted in evidence and marked Defendant's Exhibit No. 5, Sheet No. 2, August 17, 1914, C. B.

Q. Now as I understand it, Mr. Hillman, there are five banks embraced in Cla E?

A. Six, sir.

Q. Six?

A. Yes, sir.

Q. And you have prepared a tabulated statement for each one of them?

A. Yes, sir.

Q. And the one you have filed as Exhibit 5, as Class E, Hillman Exhibit No. 5, Sheet No. 1?

The Master: The suggestion of the witness is that he start with the Bank of Virginia instead of the Farmers' Bank of Virginia, which chronologically is in order.

Mr. Holt: He has this sheet marked No. 1.

The Master: I would make them harmonize with the answer; arrange your numbers so as to have them in harmony with the answer, and then there will not be confusion. Put them right in so that they correspond with the answer.

Mr. Holt: This will be page 2 then instead of page 1.

The Master: Yes, that is right; then we will change that.

Q. I will ask you, Mr. Hillman, whether or not this Sheet No. 2, as corrected from Sheet No. 1, being the schedule on the Bank of Virginia, correctly represents and truly the result of your examination of the records referred to?

A. Yes, sir, it does.

The Master: When this transcribing is done, Mr. Stenographer, have Sheet No. 1 appear in its chronological order, which is coming in now; have Sheet No. 1 come in ahead of Sheet No. 2.

Q. Mr. Hillman, have you examined the records of Virginia or the books of the Farmers Bank of Virginia with the view of ascertaining the number of shares of stock therein, if any, owned by the Commonwealth of Virginia in that bank on the 1st day of January, 1861?

A. Yes, sir, I have.

Q. What was the total number of shares of stock owned by her in that bank on that day?

A. 9,626 shares.

Q. What was the par value of a share?

A. $100.

Q. How many of those shares were to the credit of the Literary Fund?

A. 1,054.

Q. How many to the credit of the Board of Public Works Fund?

A. 3,522.

Q. And how many shares to the credit of the Commonwealth Fund?

A. 5,050.

Q. What was the total par value of those shares?

A. $962,600.

Q. Did you or did you not undertake to ascertain the book value of a share of that stock on January 1, 1861?

A. Yes, sir, I did.

Q. What did you ascertain it to be as of that date?

A. $115.07 per share.

Q. How did your ascertain that book value?

A. By deducting from the assets of the bank its liabilities outside of its capital stock and the profit and loss, and dividing the capital stock into the result.

Q. And that gave you?

A. $115.07 as the book value of the stock on January 1, 1861, it always being understood when we say January 1, 1861, that we mean at the opening of business on that day.

Q. You may state whether or not in the exhibit you are about to file you set forth in detail the assets of the company as of that date and its liabilities from which or upon which you base this calculation?

A. Yes, sir.

Q. Where did you get those assets and those liabilities?

A. From State document No. 14 of the annual report of the Auditor for 1861, pages 14 and 15, which reprints the statement of the officers of the bank under oath as to its condition on January 1, 1861.

Q. Was there any dividend declared on that day?

A. Yes, sir.

Q. What was it per share in dollars or in percentage?

A. 3½ per cent., or $3.50 per share.

Q. You may state whether or not you deducted that from the book value of $115.07 per share?

A. I did, yes, sir.

Q. What did it leave you?

A. $111.57.

Q. Why did you make that deduction for the purpose of getting the net book value of a share of stock as of that date?

A. Because we are claiming under Schedule D the cash which was received for that dividend, and therefore we cannot have it in twice.

The Master: That is and duplicate the item?

The Witness: Yes, sir.

The Master: Is that a semi-annual or an annual dividend, that 3½ per cent.?

The Witness: Semi-annual, sir.

Q. You may tell us whether or not you examined the records of Virginia or the books of the Farmers Bank of Virignia with a view of ascertaining whether or not dividends were declared on State stock from 1856 to 1863?

A. Yes, sir, I made such an examination, basing my views on the payment of dividends on certain stock, not considering it necessary to go to the bank books as they were paid dividends, the same as any other stockholder.

Q. What dividends, if any, were declared and paid upon this stock in the year 1856?

A. 8 per cent.

Q. In 1857?

A. 8 per cent.

Q. In 1858?
A. 7½ per cent.
Q. In 1859?
A. 7½ per cent.
Q. In 1860?
A. 7¼ per cent.
Q. 1861?
A. 7¼ per cent.
Q. 1862?
A. 7 per cent.
Q. 1863?
A. 7½ per cent.
Q. Have you prepared a schedule showing the result of your examination into this bank in accordance with your testimony just now given?
A. Yes, sir, I have.
Q. How have you marked it or designated it?
A. In the upper right hand corner, Exhibit Hillman No. 5, Sheet No. 1; in the upper left hand corner, Class E.
Q. Will you now file the same as a part of your deposition and mark it Exhibit No. 5, Sheet No. 1.
A. Yes, sir, I now so file it.

The paper was admitted in evidence and marked Defendant's Exhibit No. 5, Sheet No. 1, August 17, 1914, C. B.

Q. You may state whether or not the exhibit just filed by you correctly represents the facts as taken from the records examined by you?
A. Yes, sir, it does.
Q. Have you examined the records and archives of the Commonwealth of Virginia or the books of the Bank of the Valley with a view of ascertaining the ownership of the shares of stock in that bank by the Commonwealth of Virginia?
A. Yes, sir, I have.
Q. What number of shares did the State of Virginia own in that bank on the 1st day of January, 1861?
A. 4,839 shares.

Q. What total of that number was credited to the Literary Fund?

A. 92 shares.

Q. What to the Board of Public Works Fund?

A. 1,047 shares.

Q. What to the Commonwealth Fund?

A. 3,700 shares.

Q. What was the par value of a share, Mr. Hillman?

A. $100.

Q. Were these shares or were they not in this bank all owned by the Commonwealth of Virginia prior to January 1, 1861?

A. Yes, sir, they were.

Q. What was the total par value of these shares?

A. $483,900.

Q. Did you undertake to ascertain from the books of the bank or the records of Virginia the book value of this stock on January 1, 1861?

A. Yes, sir, I did.

Q. What, from those records and books, did you ascertain that book value to be per share?

A. $114.70, or 114.7, if you use the quotation value.

Q. How did you ascertain that book value? Explain, Mr. Hillman.

A. By deducting from the assets of the bank its liabilities, outside of its capital stock and profit and surplus liabilities, and dividing the capital stock into the remainder.

Q. Have you in the exhibit that I will presently ask you to file set forth accurately and truly and in detail the assets and the liabilities of this bank as of that date upon which you have based this calculation?

A. Yes, sir, I have.

Q. You may state whether or not a dividend, semi-annual or otherwise, was declared upon this stock on the 1st day of January, 1861.

A. Yes, sir, there was a dividend declared then.

Q. What did that dividend amount to?

A. 3½ per cent. or $3.50 per share.

Q. You may state whether or not you deducted that from the book value of the stock of $114.70 per share.

A. Yes, sir, I did.

Q. What did that leave you as the net book value of the stock on the date referred to?

A. 111.2, or otherwise $111.20 per share.

Q. Why did you make this deduction?

A. For the reason that I, in a statement to be filed hereafter under Schedule D, have claimed this amount of dividend as a cash item due consideration in this period.

Q. Then as the Master puts it, you made a deduction here in order to keep from duplicating claims, is that right?

A. Yes, sir.

Q. Did you examine the records of Virginia or the books of this bank, either or both, for the purpose of ascertaining whether or not dividends were paid upon this stock from 1856 to 1863, inclusive?

A. Yes, sir, I did.

Q. What dividend, if any, was declared upon the stock of the Bank of the Valley for the year 1856?

A. Ten per cent.

Q. What for the year 1857?

A. Nine per cent.

Q. What for 1858?

A. Eight per cent.

Q. 1859?

A. Eight per cent.

Q. 1860?

A. Seven and a half per cent.

Q. 1861?

A. Six and three-quarters per cent.

Q. 1862?

A. Four per cent.

Q. 1863?

A. Four per cent.

Q. Have you prepared a schedule showing the result of your examination of these books, Mr. Hillman?

A. Yes, sir, I have.

Q. How have you marked it?

A. I have marked it in the upper right hand corner Exhibit Hillman No. 5, Sheet No. 3, and in the upper left hand corner Class E.

Q. Will you file the same as a part of your deposition and mark it Defendant's Exhibit No. 5, Sheet No. 3?

A. Yes, sir, I file the statement so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 5, Sheet No. 3, August 17, 1914, C. B.

Q. I further ask you, Mr. Hillman, whether or not this schedule truly represents the result of your examination of the books and records referred to and truly and accurately discloses the discoveries you made therein?

A. Yes, sir, it does.

Q. Have you made an examination of the records of the Commonwealth of Virginia and of the books of the Exchange Bank, either or both of them, with a view of ascertaining the number of shares, if any, of stock owned in that bank by the Commonwealth of Virginia on the 1st day of January, 1861?

A. Yes, sir, I have made such an examination.

Q. What did you find the total number of shares owned by that State at that date to be?

A. 8,755 shares.

Q. What was the par value of that stock?

A. $100.

Q. What number of shares so owned by Virginia was held to the credit of the Board of Public Works Fund?

A. 267 shares.

Q. What to the credit of the Commonwealth Fund?

A. 8,488 shares.

Q. What was the total par value of the shares held by both funds?

A. $875,500.

Q. Did you undertake from the records of that State or the books of that Bank to ascertain the book value of a share of that bank's stock on the 1st day of January, 1861?

A. Yes, sir, I did.

Q. What did you ascertain it to be?

A. 110.9 when expressed in percentage, or $110.90 per share.

Q. How did you ascertain that book value?

A. By deducting from the total assets of the bank all of the liabilities save the capital stock, contingent fund and profits, and dividing the capital stock into the remainder.

Q. In the exhibit that I will presently ask you to file did you set forth in detail the assets and the liabilities of that bank upon which you base that calculation?

A. Yes, sir, I did.

Q. Where did you obtain those assets and liabilities?

A. From document No. 14, page 22, of the annual report of the Second Auditor in the State of Virginia, for the year 1861; and this record is taken from the printed report of the officers, under oath, to the State.

Q. Officers of the Bank?

A. Of the Bank, yes, sir.

Q. Was any dividend declared, Mr. Hillman, on January 1, 1861, upon this bank's stock?

A. Yes, sir.

Q. What was it?

A. 3½ per cent. on par, or $3.50 per share.

Q. Tell us whether or not you deducted that $3.50 per share from the book value of that stock as you ascertained it.

A. Yes, sir, I did.

Q. Leaving you as the net book value what, per share, of that stock on the date involved?

A. 107.4, or $107.40 per share.

Q. Why did you make that deduction?

A. For the reason that I am claiming the consideration of this dividend as a cash item under Class D.

Q. Tell us whether or not you examined the records of Virginia and the books of this bank with the view of ascertaining what dividends, if any, were paid upon this bank's stock in the years from 1856 to 1863, inclusive.

A. Yes, sir, I have made such an examination.

Q. What was the dividend declared and paid upon that stock, if any, in the year 1856?

A. Nine per cent.
Q. 1857?
A. Ten per cent.
Q. 1858?
A. Eight per cent.
Q. 1859?
A. Nine per cent.
Q. 1860?
A. Seven and a half per cent.
Q. 1861?
A. Seven and a quarter per cent.
Q. 1862?
A. Seven per cent.
Q. 1863?
A. Eight per cent.

Q. Have you made a schedule or tabulated statement showing the result of your examination of these records, in accordance with your testimony?

A. Yes, sir.

Q. How have you marked it?

A. I have marked this Exhibit Hillman No. 5, Sheet 4, in the upper right hand corner; and Class E in the upper left hand corner.

Q. Will you file the same as a part of your deposition and mark it Defendant's Exhibit No. 5, Sheet 4?

A. I now so file it, marked as you have indicated.

The paper was admitted in evidence and marked Defendant's Exhibit No. 5, Sheet 4, August 17, 1914, C. B.

Q. Tell us whether or not the exhibit just filed truly gives the figures representing the condition of that bank as ascertained from the records examined by you.

A. It does, yes, sir.

Q. Was the dividend declared of 3½ per cent. on January 1, 1861, upon this stock a semi-annual or an annual dividend?

A. Semi-annual.

Q. Does this exhibit indicate the book and page of the records from which you have derived these figures and these facts?

A. Yes, sir, it does in each case.

Q. The books and pages are indicated then on Sheet 4 of Exhibit 5?

A. Yes, sir.

Q. Have you examined the records of Virginia or the books of the Northwestern Bank with a view of ascertaining the book value of the stock of that bank on the 1st day of January, 1861?

A. Yes, sir, I have.

Q. What did you find the book value to be per share on that date?

$111.90.

Q. How many shares of that stock did you ascertain to be owned by Virginia on that date, if any?

A. 3,744 shares.

Q. What number to the credit of the Literary Fund?

A. 500 shares.

Q. What to the Board of Public Works Fund?

A. 326 shares.

Q. What to the Commonwealth Fund?

A. 2,918 shares.

Q. What was the total par value of the shares owned by the State of Virginia?

A. $374,400.

Q. And the total book value owned by her?

A. $418,953.60.

Q. How did you ascertain the book value?

A. By deducting from the assets of the bank all of its liabilities, save the capital stock, contingent funds and profits, and dividing into this remainder the capital stock of the bank.

Q. Does the exhibit that you will presently file set forth in detail the assets and the liabilities of that bank as of that date?

A. Yes, sir, it does.

Q. Are they correctly set forth in that exhibit as appeared from the records where you obtained them?

A. Yes, sir.

Q. Did you examine the records of Virginia for the pur-

pose of ascertaining whether or not any dividends were declared and paid upon that stock from 1856 down to and including the year 1863?

A. Yes, sir, I did.

Q. What was the dividend paid then in 1856?

A. Ten per cent.

Q. What in 1857?

A. Five per cent.

Q. 1858?

A. Seven and a half per cent.

Q. 1859?

A. Eight per cent.

Q. 1860?

A. Seven and a half per cent.

Q. I find no dividend set down here for the years 1861, 1862 or 1863. What is the reason for that, Mr. Hillman?

A. The Northwestern Bank was located in the counties which afterwards became West Virginia, and there was a deal made whereby the assets of this bank were transferred to those counties, and from that date on the books of Virginia are silent as to whether or not any dividend had ever been received.

By the Master:

Q. Do the books show the transfer?

A. Yes, sir, the books show the transfer, and it is also shown in the testimony which has already been taken in this case.

Q. You mean at the former hearing?

A. Yes, sir, where the assets, stocks and so on were divided, and where I believe the Grazier Bank was afterwards set up as being the Virginia portion of this Northwestern Bank.

By Mr. Holt:

Q. Have you prepared a tabulated statement or schedule showing the facts concerning which you have just testified upon the subject of this bank?

A. Yes, sir.

Q. How have you marked it?

A. I marked it in the upper right hand corner Exhibit Hillman No. 5, Sheet No. 5, and in the upper left hand corner Class E.

Q. Will you file the same as part of our deposition now and mark it Defendant's Exhibit No. 5, Sheet 5?

A. I now file it as an exhibit marked as indicated.

The paper was admitted in evidence and marked Defendant's Exhibit No. 5, Sheet No. 5, August 17, 1914, C. B.

Q. Are the figures embraced in Exhibit No. 5, Sheet No. 5, correctly taken from the records upon which they are based?

A. Yes, sir, they are.

Q. What is the value of the Northwestern Bank stock?

A. $100 per share.

Q. And what is the book value as you ascertained the same as of January 1, 1861, by a comparison of its assets with its liabilities?

A. $111.90.

Q. I see you have marked upon this schedule net value $108.40. What is the explanation of that?

A. A dividend of 3½ per cent. being declared upon this stock January 1, 1861, has been deducted from the book value of that date, since the claim for the consideration of this dividend will be made by us later, on our examination of Class D.

Q. Was that a semi-annual dividend?

A. Yes, sir.

Q. I see, Mr. Hillman, that you have a parenthetical note under the heading "The Commonwealth Fund," on Defendant's Exhibit No. 5, page 5. Please explain that.

A. On page 47, ledger from 1856 to 1861—

Q. Page 47 or 46?

A. Page 46, ledger 1856 to 1861, in the Auditor's office, shows an entry of $400,000 of this stock on the Commonwealth Fund.

By the Master:

Q. Where does it show it, on what side of the account?

A. As a debit item, and therefore as an asset. There were no subsequent entries following the original entry in 1856 on this ledger; as I have stated before, it is very incomplete; but in the Sinking Fund journal of February 27, 1857, it shows the sale of 1,082 shares of this stock, and the subsequent payment of dividends confirmed the sale of this stock, as they were paid annually on 2,918 shares. All sales of securities when they are made, even though they may be held by the Commonwealth Fund, are under the terms of the bond issue for which they were paid turned over to the Sinking Fund, so that the Sinking Fund journal is the one which shows the transaction.

By Mr. Holt:

Q. Then you have taken into account—

By the Master:

Q. What is this ledger that you have been speaking of apparently posted from?

A. It is supposed to be a ledger of the First Auditor's office and is called the Commonwealth Fund ledger.

Q. Yes, but what is it posted from, from books of original entry in that office?

A. Yes, sir.

Q. Does the Sinking Fund constitute one of the books from which that ledger is posted?

A. No, sir. I would say with reference to that that the supporting books of this ledger, the journal, etc., are missing.

Q. You do not find them on the files?

A. No, sir; they are supposed to be in Washington, having been taken away from Richmond at the close of the war, and starting to get them further, and they were captured later on and some of them shipped back to Washington. I believe that the authorities in Virginia are on the trace of them, and I have no doubt that they will be returned to the proper place and filed. Of course that is only a side remark.

Q. You have not traced them back?

A. We think they are probably in Washington, going there in war time as trophies. Perhaps it is well to say right here that that stock of that bank was sold at a premium, which I will mention later on, bringing slightly over five per cent. on that date.

Q. That fact appears from some of the books to which you have had access?

A. Yes, sir, from the Sinking Fund, where it shows the amount of actual money received for $108,200.

By Mr. Holt:

Q. Then in your Exhibit No. 5, Sheet No. 5, you do not take into account, as I understand you, the 1,082 shares of this bank stock that were sold in 1857?

A. No, sir, I do not.

The Master: That is, not in his aggregate. He accounts for them in this way, but they do not appear in his aggregate.

The Witness: I thought it best to make that notation in case it is looked up by a party not familiar with the books, so that they would have no difficulty in locating the reason.

The Master: Which explains the discrepancy that otherwise would appear?

The Witness: Yes, sir.

Q. Can you tell the Master whether or not the State of Virginia owned these 3,744 shares prior to the 1st day of January, 1861?

A. Yes, sir, they did.

The Master: Prior to and on the 1st day of January, 1861?

Mr. Holt: Yes. He has already said that the books show that they owned them on that day.

The Master: And now you are going beyond that?

Mr. Holt: Yes.

Q. What is the fact in respect to all of these bank stocks embraced in Schedule E? I mean in Class E of the answer.

A. They were all owned by the State of Virginia prior to January 1, 1861, and also, as the Master says, on that date.

Mr. Hogg: And for several years prior, if you please.

The Master: I do not understand that any of these schedules undertake to trace back the bank stock to their date of origin?

Mr. Holt: No.

The Master: But you go back to an arbitrary date which you use for the purpose of comparison?

Mr. Holt: Yes, sir.

The Witness: I would state to your Honor that if necessary that can be furnished.

Q. I will ask you how far back of 1861 you have traced their ownership to the Commonwealth of Virginia.

The Master: You mean in this instance now or in all instances?

Mr. Holt: In each one of the five banks.

A. In each instance I traced them back to their origin.

Q. Traced by you?

A. Back to the time the investment was made.

Q. And do you recall how many years before 1861 that was?

A. No, sir, I do not; I made no mental memorandum of it, but these exhibits themselves show on all that are filed that they were owned prior to 1856, since we quote the dividends from that date on.

Q. I do not recall, Mr. Hillman, whether you explained with reference to Sheet No. 5 the absence of a dividend in 1861, 1862 and 1863 on the Northwestern Bank.

The Master: No, he has not made any explanation about that so far.

Q. Please explain why you have not set down upon that schedule the dividends for 1861, 1862 and 1863, if any dividends there were.

A. This bank was located in the counties which were afterwards made into the State of West Virginia, and as such there was a settlement made between the states whereby the Northwestern Bank was cut off from its Virginia connections, and I believe the Grazier Bank of Virginia established on the Virginia part and the Northwestern Bank still continued under the same name in the West Virginia part.

The Master: What county was the Northwestern Bank in?

The Witness: It was Wheeling.

Mr. Hogg: In Ohio County.

The Master: What county is Wheeling in?

Mr. Holt: Ohio County.

The Witness: As I said a few minutes ago, that matter is taken up on the report of the testimony which has already been given in this case, showing the transfer of those securities from the territory of one state to the territory of the other.

The Master: And the books of Virginia of course show no dividends were received by Virginia after that date?

The Witness: No, sir.

The Master: That is after the date of 1860?

Mr. Holt: After 1860; seven and a half per cent. in 1861.

Q. Have we now Sheet No. 6, Mr. Hillman? Have you examined the records of Virginia and the books of the Fairmount Bank or either for the purpose of ascertaining the ownership by the State of Virginia of stock in that bank on January 1, 1861, and prior thereto.

A. Yes, sir, I have.

Q. What books have you examined, Mr. Hillman, upon that subject?

A. The Literary Fund ledger; page 42 shows the investment.

Q. What was the total number of shares owned by Virginia in that bank on January 1, 1861?

A. 500 shares.

Q. To the credit of what fund were they set down?

A. The Literary Fund.

Q. What was the par value of a share of that stock?

A. $100.

Q. Have you undertaken to ascertain the book value of it as of January 1, 1861?

A. Yes, sir, I have.

Q. What did you ascertain it to be per share?

A. $106.87 per share.

Q. How did you ascertain it?

A. By deducting from the assets of the bank all of the liabilities save capital stock and surplus, and then dividing the capital stock into the remainder.

Q. Where did you get the detail of its assets and its liabilities as of that date?

A. From page 156, document 14, Auditor's Report for 1860-1861, copy of the book on file in Second Auditor's office, wherein is printed the report of the officers of the bank under oath, as to its condition.

Q. They reporting its assets and liabilities?

A. Yes, sir, as of date of January 1, 1861.

Q. Do you know when Virginia acquired this stock?

A. It was within a short time prior to 1861, I believe a little over a year.

Q. And did she still own the stock on that date?

A. Yes, sir, she did.

Q. How far after that date have you traced her ownership?

A. I have not traced her ownership after that date as yet.

By the Master:

Q. What does the book from which you got this information show as to ownership subsequent to January 1, 1861?

A. She still owned it and owned it for some time. The exact date I am not prepared yet to state.

Q. Do you mean what the books show as to the exact date of sale or transfer you are not prepared to state?

A. No, sir; I would state that to the best of my recollection and belief, I have looked over the matter but I have not burdened by memory with it, is that it went to pot in 1865.

Q. It went to what?

A. It went to pieces in 1865; I am not sure—

Q. What do you mean, the bank went to pieces?

A. Yes, sir, I am not sure whether it was included in the smash-up at the end of the war or not.

Mr. Holt: We will have exhibits tracking it by the books to 1863 at least. We will show those things by other schedules.

Mr. Anderson: The auditor transferred it to West Virginia.

The Master: I have sent on by express all my original papers in the case, and whether I put in one or two duplicate copies of my report or not I am not sure. Has anybody here an extra copy which I may use?

Mr. Robinson: You may use mine at any time.

The Master: Then that will save sending back to my office for it.

The Witness: I think you will find that that is one of the stocks which was transferred to West Virginia, and taken up in your former settlement of this matter. May I ask that my statement from memory, which I feel is wrong, that this bank is one of those that went to pieces, be stricken from the record.

The Master: Just as you fancy, so far as I am concerned. Of course you must all appreciate that a statement like that won't have any weight with me unless there is something on the record that shows a foundation for it.

The Witness: I should deem it a rather bad thing to have that go on the record.

The Master: You have no objection to that?

Mr. Holt: No, he wants to make that correction according to the fact.

By Mr. Holt:

Q. Was a dividend, semi-annual or otherwise, declared upon this stock on the 1st of January, 1861, Mr. Hillman?

A. Yes, sir.

Q. How much?

A. 3 per cent., or $3.00 per share.

Q. Did you deduct that from the book value as of January 1, 1861?

A. Yes, sir, I did.

Q. What did it leave you?

A. 103.87.

Q. Why did you make the deduction?

A. For the reason that the matter of this dividend and its amount will be presented for consideration hereafter under Class D, being a cash item.

Q. Did you examine the books of this company or the records of Virginia with a view of ascertaining the declaration or payment of any dividend upon this stock?

A. Yes, sir, I did.

Q. What dividends did you find declared and paid, if any?

A. In 1860, 4½ per cent. I have not followed the books further than that.

Q. Have you prepared a schedule or tabulated statement showing the matters that you have testified to concerning this bank stock?

A. Yes, sir, I have.

Q. How have you marked it?

A. I have marked it in the upper right hand corner, Hillman Exhibit No. 5, Sheet No. 6; in the upper left hand corner, Class E.

Q. Will you file this exhibit as a part of your deposition and mark the same Defendant's Exhibit No. 5, Sheet 6?

A. I now file it, marked as requested.

The paper was admitted and marked Defendant's Exhibit No. 5, Sheet No. 6, August 17, 1914, C. B.

Q. You may likewise tell us whether or not this exhibit truly sets forth, and accurately, the figures as derived by you from the records and books examined by you upon the subject?

A. It does.

Q. Mr. Hillman, have the blue prints of Class C come in yet?

A. Not yet.

Mr. Holt: Your Honor, they are about to complete the schedules of Class C and Class D, but we have not had an opportunity to run over them ourselves, and if you will indulge us until to-morrow morning we will run through them to-night. There are a great number of old railroads included, and it is rather an intricate matter.

Mr. Robinson: How about F and G?

Mr. Holt: We are taking those up, too.

Mr. Robinson: We would not have any objection to your going ahead with those carbon copies.

Mr. Holt: We want the witness to make such explanations as are necessary as we go along.

The Master: If there is no objection we will suspend until to-morrow morning.

Mr. Robinson: We would like to have them at the hotel to-night if possible.

The Master: Can you furnish them to Mr. Robinson?

Mr. Holt: Yes, we will do that.

The Master: Then you will hand them over to the other side so that they may examine them between now and to-morrow morning, and they may make their preparation for cross-examining on them to-morrow.

Mr. Holt: Yes.

Adjourned to August 18, 1914, at 10 A. M.

BEFORE THE MASTER.

Richmond, Va., August 18, 1914.

PRESENT: Same counsel as on yesterday.

Mr. Anderson: On behalf of the Commonwealth I desire to submit a motion, which, if granted, will greatly facilitate the hearing and decision of this case and promote, in my judgment, the ends of justice. I will read the motion:

"The plaintiff, by her counsel, moves that the Master do rule that June 20, 1863, the date of the creation of the State of West Virginia and the date as of which the court has ascertained the value of the property in the two States as a basis for the apportionment of the debt, is the date as of which the values of the alleged credits asserted in the supplemental answer of the defendant must be ascertained, should the defendant be found to be entitled to any of said alleged credits; and that the Master will exclude from consideration any evidence directed to the fixing of any other date for the ascertainment of said values."

Now, if your Honor please, I shall very briefly present, with your indulgence, the grounds on which this motion is based. And I will premise by saying that all the facts which need be considered by your Honor, or by any other tribunal in passing upon this question, are now in the record. The decision of the question does not depend upon any facts which will have to be supplied by the introduction of additional testimony in this cause. So that question, if your Honor please, is as ready for decision as it will be at the end of this investigation. Its decision now, as your Honor will observe, will

save both parties the duplication of labor, the unnecessary expenditure of time and of money for the purpose of preparing this case upon two branches, when it will only be ultimately necessary that it shall be submitted upon one; and when it will certainly be decided upon that one. West Virginia dates her existence from the 20th of June, 1863. Down to that time, she constituted a corporate and integral part of the Commonwealth of Virginia. According to the principles of public law and of equity controlling such matters, not only would the debt be ascertained as of that date, but all the rights of the parties would be determined as of that date, June 20, 1863, *independently of any agreement or convention between the two States.*

The date as of which the amount of the debt is to be ascertained was prescribed by the convention between the States, not by the Wheeling Ordinance, although it was prescribed by the Wheeling Ordinance, but it was more effectively prescribed by the agreement of the two States,—the compact between the two States arising from the Act of the General Assembly of Virginia at Wheeling, of May 13, 1862, which gave the consent of the Commonwealth of Virginia to the formation of the State of West Virginia out of her territory. In accordance with the provisions of the Constitution adopted for the State of West Virginia by the convention which met on the 30th of November, 1861, at Wheeling and framed a Constitution for the new State.

The Eighth Section, refreshing your Honor's recollection about some matters of detail which perhaps may have escaped you, the Eighth Section of the Eighth Article of that Constitution provides that the new State shall assume an equitable portion of the debt of the Commonwealth of Virginia existing prior to January 1, 1861.

Now but for that stipulation, West Virginia would have been bound, under public law and by analogy, to principles established in respect to partnerships and other cases of the ownership of property in common would have been bound for her equitable portion of the debt existing on the 20th of June, 1863. It so happens, and is a part of the history of this case

and of this subject, that West Virginia practically controlled the whole matter. West Virginians constituted the Restored Government of Virginia at Wheeling, which gave this consent, and they also constituted the convention which framed the Constitution for the new State. It chose then to incorporate into that Constitution this provision, which was afterwards accepted by Virginia by her Act of Assembly of May 13, 1862, granting her consent to the formation of the new State upon the stipulation that West Virginia's liability for any portion of this debt should be limited to such debt as existed on the 31st of December, 1860.

It is proper that I should say that there was some reason, from the standpoint of the then citizens of Virginia living in northwestern Virginia, and who moved in the creation of the new State, for limiting this liability to some date prior to June 20, 1863. The 17th of April, the date of the adoption of the Ordinance of Secession by Virginia, might not have been an arbitrary date. The 11th of June, 1861, would not have been perhaps an arbitrary date, as that was the date on which the revolutionary convention which met in Wheeling created the restored government of Virginia and repudiated the Confederate Government of Virginia by the ordinance adopted on that day. But the 1st day of January was adopted in the interest of West Virginia, the great object being doubtless to avoid West Virginia's being shouldered with any portion of any liability created by the government of Virginia at Richmond, after the representatives from northwestern Virginia had withdrawn from the Legislature of Virginia and from the Virginia Convention, then in session.

Whether it was justifiable or not, that stipulation was made between the two States, and West Virginia's liability, so far as the amount of the debt is concerned, was determined as of the 31st of December, 1860. The fact is that a very large sum was added to the public debt of Virginia after the 31st of December, 1860, which had not been brought into this account, and could not be under the circumstances. Large expenditures were made on the Covington & Ohio road and large expenditures on other works of internal improvement, under

contracts made before January 1, 1861, but which had not become ascertained or liquidated liabilities of the State until after that date. The Board of Public Works issued and sold, as they were authorized by law to do, bonds for large amounts, after that date, which equitably and justly are binding upon West Virginia, independently of the provisions of the Constitution of that State, as any other portion of the debt. Relief from liability on account of this indebtedness was thus contracted for by West Virginia and as a consideration therefor she agreed to assume an equitable portion of the debt existing prior to January 1, 1861.

If your Honor please, I am unable to discover any ground upon which the proposition I lay down can be questioned. As a matter of public law and of right, all the rights of the two States and the liabilities of the two States, independently of agreement, were absolutely determined as of the 20th of June, 1863. It follows that this is the date of which the values of any credits and any charges against the State of Virginia shall be determined. West Virginia will base her contention that this date should be fixed or may be fixed as to the value of these assets on the 1st day of January, 1861, or at some other time, because they strangely contend in this case, as is shown by their answer, that Virginia held all these assets in trust, as I understand that answer, for West Virginia, or in trust for her creditors, and that West Virginia has a right to demand that Virginia shall perform that trust, and that therefore Virginia must account for whatever could be fairly and for whatever has been realized from the sale of these assets. Their answer and their contentions as exhibited so far in this case do not seem to be consistent. They sometimes rely upon the view that Virginia is a trustee and as such must account for the fair value of these securities. Then in other parts of their answer they contend that Virginia shall account for whatever she received and realized, no matter when, from these assets. All of these contentions are based upon the provisions of the Constitution of Virginia of 1851 and the Act of Assembly of Virginia of 1853 in regard to the public debt. These provisions of the Constitution are found in the Supple-

ment of the Record, which contains nearly all of the acts of either State germane to the Virginia or West Virginia debt. At page 200 of that volume will be found the extract from the Constitution and also the Act of 1853. I will not tire your Honor by reading them. The Constitution is simply a provision for Virginia's own government, an entirely voluntary arrangement on her part, creating neither a contractual nor a fiduciary obligation upon her, by which for her own convenience in dealing with this debt she provides that there shall be a sinking fund created; that the Legislature shall set apart seven per cent. upon the amount of any debt created, one per cent. of which shall be used for the purpose of the extinguishment of the principal and six per cent. of which shall go to pay the interest; and the Act of 1853, beginning on the same page, merely carries out that provision of the Constitution, and accordingly makes a continual appropriation for that purpose.

Now, they have both been repealed by Virginia. The constitutional provision was repealed by the Constitution of 1864 and again by the Constitution of 1869 of Virginia, these repeals being entirely within the competency of the Commonwealth, and not violative of anybody's rights. But West Virginia had no interest in that. If any trust had been created it would have been for the benefit of the creditors, but the creditors derived no rights from that—

The Master: The bondholders.

Mr. Anderson: The bondholders— *Their* rights had been determined by their bonds. At pages from 220 to 229, and I believe to 285 of the record your Honor has already been informed as to what the provisions and stipulations of those bonds were. None of them relate to the Constitutional provisions of 1851 or to the legislative enactments of 1853. Those loans were made entirely upon the credit of Virginia, upon her promise that the bonds, the interest and principal of those bonds, should be paid in accordance with the terms of those contracts; but no collateral was put up or agreed to be put up by her; no security except her own word was given to the creditors, nor was any security demanded by the creditors.

Her credit at that time stood as high as that of any State in the Union. Here is one of those bonds, page 285,—they always recited the acts under which they were issued. This was called old "Virginia stock," but it was really the obligation of the State for the payment of money, not for the payment of dividends; it was called "stock" just as English consols were called and are still called "stock."

"Be It Known, That there is due from the Commonwealth of Virginia, unto heirs, executors, administrators or assigns, the sum of Dollars, bearing interest at six per centum per annum, from the first day of 18 , payable at the Treasury of the Commonwealth aforesaid, on the first day of January and July of each year; being stock issued in pursuance of an Act of the General Assembly of the Commonwealth of Virginia, passed on the 23rd of March, 1860, entitled 'An Act to amend the Charter of the James River and Kanawha Company,' the principal whereof is irredeemable for thirty-four years from the first day of January, 1860, and then to be redeemed.

"This Certificate is transferable on the books of the Second Auditor, by appearance in person or by Attorney.

"Witness the hand of the Treasurer, the day and year above written."

That is *mutatis mutandis* a copy of each one of the bonds issued by Virginia. None of them relates to this legislation. The claim of West Virginia seems to be that Virginia is bound here as trustee in a fiduciary relation to set apart these assets and appropriate them so as to provide for the payment of its debt and for the exoneration of West Virginia.

It seems to me that this question has been practically settled by the tribunal which has already given its decision in this case. In ascertaining the liability of West Virginia that court took the taxable resources of the two States, the assessed values of the two States, as modified by the testimony. The court had to adopt a date as of which those values could be ascertained, and acting in accordance with the settled prin-

ciples which I have endeavored to present to your Honor. That court adopted the 20th of June, 1863, as the date—which is indeed the only date that could be considered for the determination and apportioning of the taxable property in the two States. Every consideration, every argument which can be adduced in favor of that ruling of the court applies with emphasis to the question to which I am endeavoring to direct your Honor's attention. Now, if that is the date, as is demonstrable to be the case—why should we take up the time of this Commission and of counsel in all these elaborate schedules and proofs as to the values of these properties on the 1st day of January, 1861? It may be that your Honor, under the decree of the court, would feel that it was proper for you, as I think was your ruling on the former hearing, to allow evidence of this kind to come in "*de bene*" and its competency ultimately to be passed upon by you, or else the question to be referred to the court; but, sir, conditions presented here are such that great inconvenience and great cost will be imposed upon the parties and upon your Honor and upon the court, if this record is loaded down with proofs as to the value of these assets in 1861 and then as to their values in 1863, when the latter date is the only date to be considered. If January, 1861, is the proper date, it would be a mistake for your Honor to waste your time and subject the parties here to the cost and expense and delay of hearing this case upon the question of the value of these assets in 1863. I recognize, if your Honor please, that there may be some connection, though very remote, as I think will appear from a brief consideration, between the value of these properties on the 1st of January, 1861, and on June 20, 1863; and if that was the purpose for which this testimony was introduced, that is, to cast light upon values in 1863, my objection would go to its weight rather than to its competency; but that is not the purpose. The purpose is avowed and shown here. They introduce their evidence here for the purpose of fixing the first day of January, 1861, as the date as of which the values shall be ascertained, and not for the purpose of proving or introducing evidence to prove, the values of these properties at any

other date than January 1, 1861, because of the light that those facts might throw on their value in 1863. For that purpose other dates would be as competent and as effective as the 1st of January, 1861, and many dates that I could conceive of would be far more pertinent. It would be difficult to fix these values in June, 1863, as it would be exceedingly difficult to fix them in 1861, but it can be done. Most of these securities, we think, had no appreciable value then, and that can be shown; but what have the conditions on January 1, 1861, to do with that question? When your Honor comes to pass upon the question of the value of these properties in 1863 it will be necessary for you to place yourself as far as possible in the environment which surrounded Virginia and the atmosphere which enveloped Virginia in June, 1863.

The conditions which existed on the 1st of January, 1861, have no bearing whatever upon the conditions in June, 1863.

If your Honor please, it will save time and expedite and facilitate the decision of this matter, now to adopt the ruling which we suggest. We hope your Honor will see your way clear to grant the motion. I do not hesitate to say that it will be in the interest of justice, of economy, time and effort, and money, that your Honor should consider this case upon that one of these branches which your judgment may determine and make your report to the Court accordingly.

If the other side are not satisfied with the dates fixed by your Honor, they may present their objections to the court and have the question decided. They may have to come back to fix the value as of the date of 1861, if the court should sustain that view. If the evidence is to be introduced both as to the value of 1861 and 1863, I am afraid we will be here for a long time after the second Monday in October, if this case is to be fully and fairly presented on both sides.

Mr. Conrad: If your Honor please, as West Virginia should have a full opportunity of replying to every ground that is urged in support of this motion, I would ask your Honor to hear my associate Mr. Robinson, upon an additional ground, which is that the court has already decided that very

identical question. You will find from the record that West Virginia made a motion to change an order of reference from 1863 to 1861, and presented an argument in support of its motion, and the court overruled the motion and held to 1863.

Will your Honor hear Mr. Robinson?

The Master: Mr. Robinson.

Mr. Robinson: If your Honor please, we do not admit at all that any of these credits could possibly act as a set-off and reduce the amount. We will address ourselves to that when the point arises. But I wish to call your attention to Chief Justice White's opinion—

The Master: Which opinion is that?

Mr. Robinson: The last one.

The Master: The very last?

Mr. Robinson: Yes.

The Master: The one referring the case back to me?

Mr. Robinson: Yes, at the bottom of page 2.

"Without intimating any opinion whatever as to whether the items with which the proposed supplemental answer deals entered in the processes of calculation or reasoning by which the sum was previously fixed, and moreover, without intimating any opinion as to how far the items embraced in the answer could serve as credits upon the sum previously found due, and therefore to that extent reduce the amount"—

But leaving that consideration out for a moment, I should like to call your attention to a motion made by West Virginia in 1907, after the first decree was entered. That was the motion which modified the decree of reference. Paragraph 5 of the decree before you reads, "and also on the basis of the fair estimated valuation of the property, real and personal, by counties of the State of Virginia," which was taken June 20, 1863. West Virginia sought to add to that paragraph the words, "during the same period," referring back to 1861. The court denied that motion. They also sought to modify paragraph 6, and the court denied that motion. West Virginia made a request for five changes in the decree. One re-

quest was granted, the word "assessed" was inserted between "and" and "valuation" in the second paragraph of the decree. But all the requests of West Virginia to change the date from 1863 to 1861 were denied. The wealth of the two States upon which this debt has been so far apportioned, has been taken as of June 20, 1863. I take it that this very point has been passed upon by the court absolutely.

The Master: I have not got my copy of that compilation. Has anybody a duplicate copy so that I may have it in my hand?

Mr. Robinson: Yes.

Mr. Holt: Your Honor, of course it has been perfectly apparent from the very beginning, when this cause was opened up and we should come before the Master for the purpose of investigating the value of the securities claimed here as set-offs against the amount of principal found against the State of West Virginia, that West Virginia would contend that the value of those assets should be ascertained as of the 1st day of January, 1861. And it was equally apparent from the beginning, in the absence of any motions or indication even from the other side, that the Commonwealth of Virginia would contend upon the other hand that their value should be ascertained as of the 20th of June, 1863, or some later date.

Of course, our contention is, and this testimony is introduced for the purpose of showing the actual value of the stocks here involved as of January 1, 1861; something that Virginia supposed, on account of the passage of time, we might be unable to do. But this value we expect to demonstrate from the records of these books as of that date before we quit, if permitted by your Honor so to do.

Now we seriously considered making a motion in the beginning, just as my learned friend has. But our motion was the direct opposite of the one made by Virginia, namely, that the Master should, upon the very threshold of this investigation, determine that January 1, 1861, was the date of these values, and not June 20, 1863, as embodied in the present motion.

We did not do that, for the simple reason that we sup-

posed your Honor would hear the testimony upon both dates, and that you would then be in a better situation to determine which date in law should govern. In consequence of that feeling and disposition, we did not make our motion, but proceeded at once to introduce testimony upon values as of January 1, 1861, not expecting to stop there, but to introduce corresponding schedules subsequently for the purpose of demonstrating to your Honor the value of these same securities, upon the other date, namely, the 20th of June, 1863. And then the question would come for your Honor to determine which was the proper date.

I will grant my learned friend that if you could at this time fix definitely and certainly upon the one date or the other, that that would eliminate perhaps about one-half of the testimony from this controversy at the present time. But suppose your Honor should fix the one date or the other, and the testimony should stop at that point, we might have to come back here and try it all over again, because the court might disagree with us and your Honor and instead of reaching the conclusion that you had reached that January 1, 1861, was the proper date should determine that June 20th was the proper date. It looks to me that taking any other course than that which has been proposed by the defendant here, would be making unnecessarily two bites of one cherry. However, if your Honor believes that that question should be settled at this time, and this date should be fixed at this time, and that the evidence should be confined to the date determined, we would be very glad indeed, but would want to indulge in a pretty full argument upon January 1, 1861, before we finally submitted the matter to your Honor.

We have just as strong convictions that January 1, 1861, is the proper date as my friend has that June 20, 1863, is. In fact, briefly and simply by way of introduction at this time, we cannot see how it is possible to take a liability as of one date and an asset as at another date. No concern, partnership, joint tenancy or anything else was ever settled upon any such basis as that. To illustrate, if you had a partnership that was dissolved, the first thing that would be done would

be to gather in the assets, to ascertain the liabilities, carrying the two along together as of the same date and time, and after you had deducted the liabilities from the assets, if there was any surplus left it would be divided between the partners of course in proportion to their respective interests in the partnership. If, upon the other hand, the liabilities out-measured the assets after the assets had been applied to the liabilities and a balance of indebtedness should be the result, that would be contributed to by the respective partners in proportion to their respective interests in the firm. Or if, upon the other hand, you are not going to have a voluntary dissolution, but an involuntary one, and wind up your partnership by a bill in equity and consequent receivership and dissolution, the court in that instance would carry the liabilities and the assets right along together, treat them together as of the same time and place, and make the adjustment then and there.

Now let us apply that analogy to the situation between Virginia and West Virginia. Our constitutional contract or constitutional promise, section 8 of Article VIII of the West Virginia Constitution of 1861, promised to pay an equitable proportion of the Virginia debt existing prior to the 1st day of January, 1861. Any debt that might have existed but that had been paid prior to that date could not be considered. Any debt that might have been subsequently contracted by the Commonwealth of Virginia could not be considered. But you must, under that contract and constitutional promise, take the 31st day of December, 1860, as the time when the entire debt of the Commonwealth is to be determined, before you can equitably apportion it between the two sections.

Now I take it that if on that day and date the sum total of the indebtedness of the Commonwealth was thirty millions of dollars, by way of illustration, that being the amount of the common debt, and on that day and date there were twenty millions of common assets, you would, sir, of necessity, when you talk about equitable apportionment, deduct the twenty millions of assets from the thirty millions of liabilities; and then you will apportion your remaining ten millions between the two parties litigant according to the equities of the case.

It may be that this was not done by the Supreme Court when they ascertained the total indebtedness on January 1st, 1861, at thirty millions of dollars, and make the deduction at that time; they did not do it, and that is the reason that we are here now. We are not here without the authoriy of law or the decree of this court. We are here in the name and under the mandate of this court, directed to your Honor as its Special Master. It would not be safe to take the matters that have been discussed and ascertained by that court upon a former hearing as being final, in the face of a re-opened case, sent to you upon a rehearing.

Why, the whole complaint of the answer that we moved that honorable court to permit us to file, the supplemental answer, was that they ascertained a total indebtedness against the Commonwealth on December 31, 1860, of thirty millions in round numbers, and apportioned unto West Virginia, as her equitable part thereof to be paid 23½ per cent., and unto Virginia 76½ per cent. But that they had not given West Virginia the benefit of assets which at that very day and date she had the same per cent. of interest in that she had per cent. of liability in the debt. It is just as deep seated equity, we say, that we shall get our per cent., and the same per cent. of the assets, as that we shall pay a fixed per cent. of the liabilities.

Why, before we get through with this hearing I believe it will appear that this very bonded indebtedness was incurred in the purchase of these very assets, 23½ per cent. of which we claim.

Now, then, how is it possible, and would it be fair? Here is a Commonwealth that is about to split in two. It has a common debt that must be paid in proper proportion by the two debtor populations that are to constitute the new states. At the same time it has a whole lot of common funds upon hand and valuable common property. Would it be fair to sit down and say, We will ascertain the debt of January 1, 1861, and apportion it between you two debtor populations regardless of the funds on hand, regardless of securities and property that are applicable to the reduction of that debt? Now, you must find it as of that date. It would be unfair both to

the Commonwealth of Virginia and to the State of West Virginia, to take the debt as of one date and the assets as of a subsequent date. And why? They were all left in the possession of the Commonwealth of Virginia, and she might through her management of them increase them to such an extent in the course of time as that West Virginia's equitable proportion therein, might, through the good management of Virginia, inequitably minimize her proportion of the debt theretofore ascertained.

Or, upon the other hand, she having taken and kept possession of these securities, by her management of them might so depreciate and destroy them as that West Virginia's part therein would be worth nothing, although the whole of her proportion of the debt, ascertained at a preceding date, would be still in existence and undiminished.

Why, we have a case at bar. Take the bank stocks. On the 1st day of January, 1861, our part of the debt was seven millions and something. At that very time there were millions of dollars worth of bank stocks, of an actual value as of that date above par—millions of them. Well now, then is the time when you ascertain the debt, to deduct the credit or file the off-set. It is true it was not done in the first instance, but we are back here for that purpose now. Because, if you do not, if you postpone the ascertainment of our equity in those bank stocks until 1863 or 1865, they have depreciated and in many instances have become worthless. But that is just the illustration of one side of it. If upon the other hand Virginia's management of them has so greatly increased them in value at this subsequent date, let her get the benefit of it. But if they have become depreciated, if the live stock on hand, by way of illustration, has died and become lost, it is not fair to reach out into the future for the purpose of applying an off-set or a credit, the value of which was susceptible of ascertainment upon the same date that the debt was ascertained.

It seems to me, your Honor, that as a matter of practice you are bound to carry the debt and the assets on hand at the same time, hand in hand. You really cannot find the amount of the liabilities without ascertaining the amount of the assets,

and whenever you do ascertain the debt, upon the same date necessarily must you ascertain and apply the assets. Now the only reason it was not done before was because that phase of the case was not presented at that time. But that does not mean to say that we are foreclosed. Because if we had been foreclosed by the position of the court upon that proposition we would not be back here. But they have recognized our right to present that very question; and we are here for that purpose. Of course they ascertained that we owed $7,182,000, it appearing that there were no securities on hand of value. We came in with the supplemental answer, saying that there were, and we wanted our per cent. of their value as of that date, to be applied to our proportion of the liabilities as then ascertained. It looks to me, your Honor, as if upon principle and equity that you could not ascertain the value of these securities as of any other date than as of the date when the liability is inquired into and fixed. The balance must be struck at that time. To let Virginia fasten on us 23½ per cent. of the liability as of January 1, 1861, and carry the ascertainment of the assets into the future and to such another date as that they have been destroyed, you thereby defeat our right to participate therein, because we will never enjoy any participation therein except as they may be applied to the reduction and discharge or diminution of this debt, to the payment of which we must contribute.

Now we were prepared—are prepared I think—to give the valuation of these stocks upon both dates; and we did not feel that we ought to come back here, if perchance through a mistake some date should be fixed, upon which we had taken no evidence at all. But if your Honor thinks that the date should be fixed in advance, then we must insist, not that my friend's motion shall prevail but that its opposite should be entered as your finding and conclusion.

Mr. Hogg: If the Master please, the motion submitted by General Anderson, it seems to me, at least, contemplates action on the part of the Master which possibly should be left to the ultimate adjudication of the Court.

The Court, in referring this case to the Master, prescribed

the limits of the inquiry. And your Honor will notice that the conclusion of the opinion provides:

"That the subject-matter of the supplemental answer as traversed be at once referred for consideration and report to Charles E. Littlefield, Esq., the Master before whom the previous hearings were had, with directions to hear and consider such evidence and testimony as to the matters set forth in the supplemental answer as the State of West Virginia may deem advisable to proffer, and such counter showing on the part of the State of Virginia as that State may deem advisable to make. The report on the subject to embrace the testimony so taken and the conclusions deduced therefrom, as well as the views of the Master concerning the operation and effect of the proof thus offered, if any, upon the principal sum found to be due by the previous decree of this Court. Nothing in this order to vacate or change in any manner or in any particular the previous decree, and the same to stand wholly unaffected by the order now made or any action taken thereunder until the examination and report herein provided for is made and this Court acts upon the same."

It seems to me that in framing the reference and empowering the Master to act in the manner indicated by the decree the object was to give the parties full opportunity to present every question which could possibly arise, and to *do* that all proper evidence will be necessarily introduced. Now, for instance, the debt that Virginia owed was held by the creditors. The amount of the debt so far as the burden of discharging it was concerned would represent the difference between the available resources of the State properly applicable to the discharge of the debt and the debt itself, the difference between the two. We will be able to present to the Master the action of the executive officers of Virginia every time it became necessary to present the amount of this indebtedness in order to ascertain what the sinking fund would amount to. The debt was increasing from year to year, beginning with 1852. From 1822 down to 1852 the debt was about eleven millions of dollars. From 1851 or 1852 down to 1861 the residue of the debt created was about $22,000,000. At that

time a spirit of activity characterized the people of Virginia along the line of internal improvements. In order to carry out the enterprises that they conceived at that time it became necessary of course to increase the debt. In order to satisfy the people the sinking fund was provided for by the Constitution of 1851, carried into effect by an act of the Legislature of 1853. Now, from that time on the assets were itemized and by the Second Auditor of the State of Virginia presented to the public, showing that they were available for the discharge of that debt, although the debt was increased from year to year, so that, when 1861 came, these resources were almost as large as the debt itself. When the State of West Virginia put into her Constitution that she would assume an equitable proportion of that debt, she knew just as well as any of the people of Virginia *now* know that those resources were applicable to the discharge of that debt; she also knew that the burden would be comparatively light, either to herself or to Virginia. That Constitution was adopted in 1861 and ratified by Virginia in May, 1862. Now then, later in 1863 these assets were in existence, and we will be able to show to the Master that they were then estimated in the market to be worth practically the amount of the debt, not in Confederate currency, not in depreciated currency, because at that time there was no market for such stocks as we are now investigating the value of within the Confederate limits. If these bank stocks were sold, if these railroad stocks were sold, if those various other securities were marketed, they had to be marketed outside of the Confederacy, and in 1863 they could have been marketed for a sum almost equal to the amount. We will also be able to show, if the Master please, that there were no expenditures made upon any of these improvements in which these stocks were held from 1861, practically no improvements thereafter; in other words, that the investments had been completed. The expenditures were all made prior to January 1, 1861, so that thereafter Virginia did not take upon herself any additional burden for the purpose of increasing the value of these stocks or adding to their marketability, but they stood in *statu quo* from that time on.

The Master: That is, your contention is that they had already been credited?

Mr. Hogg: That they had already been credited; in other words, just the same as if they had been credited and that they stood there in parallel columns, the debt on one side and the assets on the other, and that the Auditor of State in keeping an account of these resources, and an account of the debt, carried them along together and reported them to the people of the State of Virginia, so that they when they were voting upon themselves a sinking fund knew that it would only be a period of a very short time when it would be dispensed with because the necessity for it would no longer exist. Now, West Virginia knew that Virginia knew this, and she very cheerfully put into her Constitution that she would assume an equitable proportion of the debt. Virginia ratified that Constitution and it went to the Congress of the United States with those provisions in it, and the representatives of the restored government of Virginia in Congress and the people of West Virginia who were advocating and supporting that Constitution knew of this debt and knew of these resources and knew that they were not voting upon their people a heavy burden with reference to this debt.

Now, then, coming back to the original decree in this case embodied in the form of a conclusion to the opinion delivered by the court, I think that the court designed—

The Master: When you say the original decree, you mean the decree under which I am acting?

Mr Hogg: Yes, sir. I say the original proposition.

The Master: There have been several. The one you have in mind is the one under which I am now acting.

Mr Hogg: Yes, sir. The court designed to accord to the Master the widest latitude of inquiry in order to determine the value of these assets. Suppose, if the Master please, it would be difficult from the records or from any other proper source to obtain evidence relating to the value of these stocks on June 20, 1863, provided the Master should determine *that* to be the proper date or providing the Supreme Court should determine it as the proper date, if there had been no change in the physi-

cal values of the properties which these stocks and bonds represent, and there had been no additional money expended to make them of greater value, and that they had not suffered from destruction by reason of physical causes, the value in 1861 would be very persuasive with this court in the absence of better evidence as to what the value of these assets is on the 20th day of June, 1863, provided there is no change in the conditions of this investment, as, for illustration, suppose that the dividend paying value of the property in 1858, 1859 and 1860 was seven or eight per cent., that the dividends on this same property in 1861, 1862, 1863 and 1864 was seven and eight per cent., and there is no evidence that Virginia has expended any money in keeping them up, but they were self sustaining, the reasonable presumption is that in the space of two years there could have been very little material change in the value of those assets. Now, I wish to say frankly that we are wholly committed to the view that the 1st day of January, 1861, in equity and upon reason is the true date to be fixed to determine the value of these assets, these resources, applicable to the discharge of this debt. We may, however, be wrong about it. Our opinion is subject to the review of the Master, it is also subject to the review of the Court, and we, as is said by my worthy colleague, want to free the Master and want to free the Court from any embarrassment, and we want to avoid delay in the final adjudication of this controversy, the final settlement, and consequently we prepared our testimony with reference to the date of 1861, January 1st, and we also have prepared our evidence with reference to June 20, 1863. However, we do this simply as a precautionary measure. We feel confident that January 1, 1861, is the true date; at the same time, we do not wish to sacrifice our better judgment as to what ought to be done with reference to fully determining this case and avoiding delay to our own confidence. We wish to let these two dates go together and appear in the record.

Now, as to the modification of the decree on the former application for a reference—

The Master: You mean the refusal of the court to adopt the suggestion made by West Virginia?

Mr. Hogg: Yes, sir—the truth of the matter was that the whole object, as the Master will see upon reading the original opinion of the court upon the demurrer in that case, was to settle the debt, to determine the proportion of the debt that West Virginia should equitably assume under the ordinance and the Constitution. The crucial point of time of course with reference to that matter was January 1, 1861, because the date was fixed both by Section 9 of the ordinance and Section 8 of Article VIII of the Constitution, and therefore we concluded that 1861 should be taken, from these considerations. The Court, however, held that the ordinary expenses of the State government of Virginia continued in contemplation of law until the two states were divided, and also the State continued to receive the revenues from the counties composing the State of West Virginia until the old State was divided; that there was no population to count in West Virginia until she became a State, and so on, and therefore, following the ordinance itself, it became necessary for us to take the date of June 20, 1863, in order to determine the equitable proportion of the debt assumed by West Virginia under her Constitution. This question that we are now presenting was not in the case, in fact it could not have been in the case under the former theory. We therefore submit that the matter now before the Master has not been adjudicated; it is a question entirely new; it has never been raised before the Supreme Court until our supplemental answer was filed; it was not raised in the former hearing before the Master, and now for the first time in the whole history of this case has this question become material and of course all controlling, as we think, in the disposition and allowance of these assets.

Mr. Holt: Pardon my making a suggestion before you sit down, that the motion to amend the decree of reference referred to details of a narrow character, not involved here at all.

Mr. Hogg: Entirely.

The Master: Your point is that they were details and did not involve the main proposition?

Mr. Hogg: Yes.

Mr. Conrad: The question here as I apprehend it is a date upon which an account as to liabilities shall be taken. It is very much to be regretted that West Virginia when this order was made by the court, announced by the court, had not asked in the interest of definiteness that a time be fixed; especially is it unfortunate because West Virginia was admonished by her experience in the matter when she adventured before, not as a matter of detail but as a matter that reached down to the very fundamentals of this case, that the date of January, 1861, would not be fixed by the court as a time.

I think if my strength holds out I will show that my learned friend has been misled, I fancy by a false analogy. He has taken the case of a partnership as furnishing an analogy, which he seems to argue as if it was on all fours. I have taxed my ingenuity, limited as it is, for twelve months before this bill was filed to find out an analogy to which this matter could be likened, and there is none. It is not a case of a co-partnership or a joint tenancy or any joint interest; it is a case of a division of an existing entity, a governmental entity, a thing that never occurred before, not even in the partition of Poland; they did not regard its public debt. Here is where a commonwealth has been partitioned, and I can find nowhere in history an illustration. The text books vapor a good deal about hypothetical cases, but nowhere do the instruments cover an exact specific case.

Why did they fix January 1, 1861, as the time beyond which West Virginia should not be liable for any debt created by Virginia, why did they fix that date? Some period of time must be fixed, not capriciously, nor arbitrarily, some date must be fixed upon apparent reason. Why did they fix January? Because January is the beginning, I fancy, of the fiscal year. Within ninety days war was flagrant. In August of that very year a government was set up west of the Allegheny Mountains, not a separate government, but a government claiming to be the State of Virginia was set up; and wisely and properly was it said that West Virginia afterwards created, should not be made liable for any portion of any debt created by the

State of Virginia after this other government, by whatever name, in whatever form it might present itself, should have been set up. The restored government of Virginia is the State of West Virginia; therefore January, 1861, was a very proper date to fix beyond which West Virginia should not be made liable for any debt created by Virginia. My friend says, in carrying out his analogy of partnership, that assets and liabilities are * * * Oh, no, not at all. There could not be a semblance of partnership here until an antagonistic interest arose that would warrant a partition or dissolution, and they did not arise until June, 1863. There was no antagonistic interest set up that would have warranted a dissolution of partnership, as, for instance, one partner claiming to be the exclusive owner of a portion of the assets, and one partner claiming to exercise exclusive control over a part of the partnership property—that did not occur until June, 1863, and that was the reason why it was held that the value of the debt must be fixed as of January, 1861. There was no question of off-sets, counter claims, antagonistic interests to arise in this case until June, 1863, because then for the first time did the antagonistic interests arise and appear, and that runs through all the history of this case. I find that as early as February 3, 1863, that all property, real, personal and mixed—this is an act of the restored government of Virginia—"That all property, real, personal and mixed, owned by or appertaining to this State, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this State, or in the president and directors of the Literary Fund, or the Board of Public Works thereof, or in any person or persons for the use of this State, to the extent of the interest and estate of this State therein; and shall also include the interest of this State, or of the said president

and directors, or of the said Board of Public Works in any parent bank or branch doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this State, or of the said president or directors or of the said Board of Public Works, or of any person or persons for the use of this State." Now, note that please; that is in February, 1863, the restored government of Virginia, which was only another name for West Virginia, as we all see, that government said that every piece of property, real, personal and mixed, including stocks in all corporations within the boundaries of the proposed State of West Virginia should upon the creation of that State become the property of that State. There was a policy made and accepted by West Virginia when it became a State, provided for in February, 1863, six or seven months before the State actually became a State, and which included all property, real, personal and mixed, stocks of every corporation, that they should upon the creation of the State of West Virginia become its property without further deed, *ipso facto,* by virtue of that act alone. Can it be possible that a partition can be made as of one date as to one partner and a partition of the same property be made as of another date as of the other partner? How can you say that West Virginia shall stand liable for this property and by its very act should provide for liability in a future accounting as of the date when West Virginia was admitted into the Union, but that the State of West Virginia on her part shall account for her share of those assets of January, 1863? I want to call your Honor's attention, and I do not claim at all and do not wish to be understood as claiming that I am giving the construction and interpretation of the entire answer of West Virginia—I have read it with great care I think, but I find this on page 20. Part of the answer of the defendant alleges that "Under the provisions of Sections 28, 29, and 30 of the Constitution of Virginia of 1851, in force January 1, 1861, (Code of Virginia, 1860, page 47), she became, and was, entitled, under her Constitution adopted and in force on June 20, 1863, to an equitable proportion of and in-

terest in the stocks, bonds and other securities, credit and settlement for which she now seeks to obtain by her supplemental answer." That fixes the date, and she has a right to come into court when the thing becomes vital, when she has a right to demand a day in court, under the very provisions of the answer, that is in June, 1863, when her Constitution took effect, because that is the date she sets up in her answer as the date on which under the Constitution, by virtue of which she acquired an interest in this property for the first time. Hitherto her interests had been common, that of the whole state, and then for the first time her antagonistic interest appears, and then for the first time she claimed the right to demand an accounting and a settlement, and it was only under that Constitution that she acquired any rights, it was only on that date she acquired any rights. The power of Virginia to create further liability by public debt was fixed on January, 1861, and on that day and for that reason and that reason only the right of West Virginia to acquire and fix the value on that day accrued. West Virginia has a right to oppose set-offs and counter claims, to oppose the claim of Virginia existing only at the time when West Virginia acquired a separate entity from Virginia, when separate rights and interests accrued to her, among those, a right of action; she could not have it at a period when she did not exist.

Mr. Lilly: If the Master please, supplementing hurriedly the remarks made in answer to this motion on behalf of the defendant, I want to correct one or two mistakes of my friend just closing on behalf of the plaintiff. He suggested that there was a reason why the debt should be ascertained as of January 1, 1861, and gave as that reason that it was presumably the end of a fiscal year. I desire to state that at that time the end of the fiscal year was September 30th, and not the first of the calendar year, hence that reason would not prevail.

The Master: Fiscal year in Virginia you mean?

Mr. Lilly: Yes; but there was a reason, if the Master please. The black clouds of war were hovering in the horizon in this fair land of ours, as they are desolating the European countries today, and that country west of the mountains,

as my friend said, had both reins of the government, not only for Virginia but West Virginia, and she said "we will protect our rights in the amount of this debt and we will limit it to the 1st day of January, 1861. Why? Because of the roll of the drum, the increased debt that Virginia is going to heap upon the entire people because of war, and we are going to protect our rights by limiting the date to January 1, 1861." Would not those same fathers that protected us in the amount of the debt have held the same desire to protect us in the subject of debt and in the assets? Were they all penny wise and pound foolish? Were they going to protect as to the amount of the debt and then say it makes no difference what becomes of the assets? The same motives that actuated them to protect the counties west of the Alleghanies as to the *amount* of the debt would operate to protect them under Section 8 of Article VIII of the Constitution which uses the word equitable and evidently contemplates the assets, and why and how did it so do? The section says that West Virginia will assume an *equitable* proportion of the debt—when? As of January 1, 1861. What is the debt? Is it a part of an accounting? Is it a partial determination? Is it running one side of the page of the ledger and not the other? You don't know what a debt is until the credits are taken from it; you don't know as a matter of fact that there is a debt, and there can be no debt broadly and equitably speaking until the assets are taken from the liabilities and the balance struck. In Section 8 of Article VIII, by the terms of the contract, our fathers beyond the mountains were protected in their assets, because it is a strange course of reasoning, it is a forced necessity, that requires the plaintiffs in this case to want to saddle a debt on us as of a certain day and then after the devasting floods of war have destroyed those assets, bring them in and say "Here they are." The gentleman first speaking and who made the motion said that all of the facts are in the record necessary for a determination of this litigation. Possibly so from the plaintiff's standpoint, but there are *other interests* which belong to the defendant, and the Court apparently was of the opinion that they were not in the record; otherwise, why the necessity of referring this

case back to this Master to determine certain facts if they were already in the record? It is a presumption for me to argue and say to this Honorable Master that the facts upon which this defendant relies were in the record or were insisted upon, but, as the last gentleman, Dr. Hogg, associated with me in this case said, it is now for the very *first time* that it becomes material to ascertain the value of these assets. All of the gentlemen on the other side argue that the value of the assets must be determined as of 1863. I desire to refer the gentlemen to the resolution of their own State, not the restored State, but their own, because that recognized a different theory, as in 1866 or 1867 when they came over to ask West Virginia to come back they said if she won't come back then let us partition the assets, ascertain the debt and partition the assets, and that was I think in at least three separate resolutions and acts. If you take it as of 1863, you can as well take it as of any subsequent date. They say we have a back to be whipped by placing an enormous debt upon us, but we have no right or no such standing that we can partake of any of the benefits as of the same date that that enormous debt is sought to be placed upon us. Is it equitable for the gentleman sitting there on one side and myself to be in business—and this is more nearly a partnership relation than anything I know of—for him to take the flour and bacon and meal and sugar and corn unto himself and say "You shall pay so much of the debt as of this date and let me take practically all the assets over and dispose of them"—let him take them foreign to the purpose for which he was holding them and for which the common property was not held, and depreciate part and destroy a part, and then, come back to me and say "Nothwithstanding I have destroyed these goods, notwithstanding the fact that I will keep some of them, notwithstanding the fact that I gave some of them away, notwithstanding the fact that I sold many of them and treated them as my own absolute assets, now that there is a loss occasioned, whether right or wrong, by my own act, I am going to fix some date where they will be of the least value and give you your rights as of that date." It was said by the last gentleman that there was no antagonistic interest

between the territory east of the mountains and west of the mountains until June 20, 1863. Back as early as the constitutional convention of 1829 and 1830 that same rumbling, that same discord, that same disagreement that later gave force in cannon and war existed at that time, and on the 17th day of April, 1861, a few months after January of 1861, Virginia said she would cast her destinies with the Southland, away from the regular organized federal government, and would take the assets with her. She did not possibly say she would take the assets in so many words, but her act, her deed, spoke louder than any words. Then in June the loyal people west of the mountains set on foot the establishment of the real government of Virginia loyal to the Union. Was that an antagonistic condition? And on August 20th of that same year those fathers beyond the mountains said "We give West Virginia a right to organize a State within our territory." Was that antagonistic? And so it followed.

I want this feature especially impressed, that while West Virginia did not assume her legal status in the galaxy of states until June 20, 1863, yet, by every tie of blood, by every dissenting influence of war, she was a territory unto herself, and Virginia, with what she was and hoped to be and had been, was a territory unto herself. And it was only awaiting the evolutionary process of time and certain formal regulations until West Virginia should assume her legal existence. But to all intents and purposes she was separated and divorced from the old Commonwealth, the old Commonwealth with her idols in one direction, and the new-to-be commonwealth or state with her idols in another direction. And while, as I said a moment ago, she did not take on her legal attitude until June 20, 1863, yet in deed and in truth she was living in another clime, she was having her other conventions, she was having her other legislatures, and the government of Virginia was doing likewise. And it is equitable to say that we shall have to pay the debt as of a certain day, referring back to my former statement, and yet allow Virginia, who created the debt (and outside of the record, primarily for her own benefit) to take these assets and destroy them or do with them

as she pleases, and make us account on some future day?

And recurring back to what I said in opening if we are to assume an equitable proportion of the debt as of January 1, 1861, how can we do it unless you give us credit for our portion of the assets? We feel that this is a vital question. If it is thought proper, as my associate counsel, Judge Holt, said, to determine it now, it is up to the Master to conclude. We believe, we shall insist, that January 1, 1861, is the date, not only the date under the contract as set forth by Section 8 of Article VIII of the Constitution, because it so says, according to our interpretation, but it is the proper date in equity and good conscience; and after all, as the Supreme Court has said, and as your Honor has said, this is a case to be determined upon the broad equities of right and wrong; of course guided within reasonable limitations by the rules of law and procedure.

It is inequitable to establish the date as of June 20, 1863. It is equitable to establish the date as of January 1, 1861. It is legal to do it. And if the Master cares to rule on it, we insist, as Judge Holt says upon the converse of the motion of the gentleman representing the plaintiff.

I am calling the Master's attention to an idea that was suggested by a gentleman sitting by. If your Honor will remember, in ascertaining the amount of the debt nine hundred and seventy-seven thousand dollars past interest from July 1, 1860, to January 1, 1861, was added in the total of the debt, notwithstanding the fact subsequently introduced in this evidence shows at least eight hundred and nineteen thousand dollars was then and there in the sinking fund, provided by the Constitution of 1851 and 1852 and by the Act of March 23, 1853, for the specific purpose of paying the debt. Now would it be equitable for the accrued interest, nine hundred and seventy-seven thousand dollars to be put into the debt to swell it, to let them in the meantime, from January 1, 1861, to June 20, 1863, appropriate this eight hundred and nineteen thousand dollars provided for the very payment of that debt or the interest and we get no benefit from it? Because within a month's time after January 1, 1861, this eight hundred and

nineteen thousand dollars, with other money, went to pay this interest, the interest added in the total of the debt, and according to the equitable settlement that is insisted upon on the other side, this asset of eight hundred and nineteen thousand dollars would have vanished in thin air, they pay the interest out of our common assets, and according to their theory that would absolutely disappear.

And there is another reason why January 1, 1861, ought to control and prevail, and that is because at that time we were in a better position to know and determine as to the value of these assets. Because if you wait until June 20, 1863, in the intervening days of war it is harder to determine. And then you take the date as of January 1, 1861, suppose ther is a loan, and interest running up to 1863, here is six per cent. to the interest fund, one per cent. under the Constitution and Act of 1852 and 1853 goes to the liquidation of the principal. Where would that go to? Certainly not to reducing our part of the debt, because it has been definitely determined as of January 1, 1861. And yet, while our assets were being dissipated in various ways, this one per cent., coming out of our assets, reducing the principal, we get no benefit thereof. I thank the Master.

Mr. Harrison: If your Honor please, the discussion of this motion has taken a very wide range. Many matters have been dealt with that have no legitimate bearing upon it. The reasons for it we think are obvious and can be briefly stated.

If West Virginia is entitled to credits to be applied upon her share of the principal of the debt, then it must follow that the *value* of those credits must be ascertained as of some date. You cannot inform and advise the court, as you are required by the decree of reference to do, without ascertaining the date, if credits are to be allowed, upon which you will determine their value.

Therefore, it seems obvious that the proper thing to do is to fix that date at once, in order that the evidence introduced, may have reference to it. It is contended by the other side that the date should not be fixed until all of the evidence has been introduced relating to more than one date, because as

it is said, your Honor and the court would thereby be the better enabled to determine what date should be adopted. But the date does not depend upon the evidence that may be introduced as to *the value of the assets.* The value of the assets must be determined with reference to a *date,* but the date is not determined by the preponderance of proof in respect to values at different periods.

Therefore the motion calls upon your Honor to advise the parties and their counsel the date as of which credits, if any, will be ascertained and allowed, in order that they may address themselves to that date in the introduction of evidence. It surely would be an advantageous thing to do, if it will result, as Judge Holt says, in shortening this proceeding by one-half. If we can be spared one-half of the time, labor and expense necessary to be expended in pursuing the course now being pursued, by determining in advance the date as of which the value of these assets must be ascertained, surely we ought to do it.

The contention of the defendant is that those values must be determined as of January 1, 1861, while the motion submitted by the plaintiff asks your Honor to rule that June 20, 1863 is the date as of which they must be ascertained; if the defendant should be found to be entitled to any credits.

There seem to me to be conclusive reasons why the 20th of June, 1863, must be the date adopted. West Virginia became a State upon the 20th of June, 1863. The dismemberment of the old State, became an accomplished fact upon that date. Prior to that period the territory now forming the State of West Virginia was part of the State of Virginia. There had been in fact, whatever may have been contemplated, no actual division of the territory of the Mother State until June 20, 1863; and obviously therefore no conflicting interest or rights between the two could arise until that date. Now it happens that January 1, 1861, was specifically fixed as the date for ascertaining the *amount* of the debt, with reference to West Virginia's liability for a share of it. Reasons have been stated why that was done. It is immaterial why that was done. We know the fact, that there was a stipulation, that the amount

of the debt should be fixed as of the 1st of January, 1861, but the stipulation went no further.

I presume the reason was, as stated, to avoid any liability after that date for any debt that Virginia might create. That doubtless, as the Attorney General of West Virginia said, was the all-sufficient reason that moved the "fathers" to fix a definite period for ascertaining West Virginia's share of the original debt. But I say that agreement did not extend any further.

Now the question before us is not the period from which the debt shall be fixed, but the period as of which the value of alleged credits shall be ascertained. And the value of those credits must necessarily be determined as of the date of the separation, in the absence of any stipulation to the contrary, because not until that date was it possible for any conflict of interests to arise, in respect to the avails of the original debt.

Now Judge Holt said, and he made the point with his usual force and earnestness, that you cannot take a liability as of one date, and the value of an asset as of another date, for the purpose of applying set-off against that liability.

I have the authority of the Supreme Court of the United States for saying that it can be done. In the opinion of the Court delivered 6th of March, 1911, it is said: "The amount of the debt, January 1, 1861, that we have to apportion, no longer is in dispute." We have here the judicial declaration of the fact that January 1, 1861, is not only the undisputed date as of which the amount of that debt should be ascertained, but also of the fact that the amount of the debt was no longer in dispute. Continuing the Court said:

"The Master's finding was accepted by West Virginia, and at the argument we understood Virginia not to press her exception that it should be enlarged by a disputed item."

Now the thing that the Court had to decide was the apportionment of that debt, that is to say, on what basis, and as of what date would it make that apportionment.

We find the Court settled these questions as follows:

"We are of opinion that the nearest approach to justice that we can make is to adopt *a ratio* determined by the Master's estimated valuation of the real and personal property of the two States upon the date of the separation, June 20, 1863."

I submit, if your Honor please, that if the Supreme Court of the United States found that the nearest approach to justice was to apportion the debt itself on the basis of values, *as of June*, 1863, the same considerations require that the assets, if they are to be apportioned must be divided, or their value ascertained, as of the same date. Judge Holt was mistaken therefore when he stated that you cannot take a liability as of one date and apportion it on the value of an asset as of another date.

Mr. Holt: You certainly do not contend that the Supreme Court was then comparing assets and liabilities?

Mr. Harrison: I have shown that a debt, the amount of which was fixed on January 1, 1861, was apportioned by the Court on the basis of values ascertained, as of June 20, 1863, the date of the creation of the two States. And it must follow, that if it was in the interest of justice, to apportion the debt on the day of the separation, it is likewise in the interest of justice to ascertain the values of these so-called credits as of the same date.

I submit that it is not an open question. On reason and authority I am justified in saying that the date of the division of the territory of the Mother State, and the erection out of her territory of a new State, is the date upon which their respective rights must be fixed, *quoad* the property of the original State.

I respectfully submit that this motion should be granted. I do not see how your Honor can inform and advise the court in respect to the matters referred to you, without fixing a date for the ascertainment of the value of these assets, if West Virginia is entitled to a share of them.

How can your Honor reach a conclusion as to the effect or operation of the evidence upon the principal sum found by the court without knowing, if you should be of the opinion that credits should be allowed, the value of those credits? And

you cannot determine their value without fixing the date as of which you will take their value. It will be absolutely necessary for your Honor, if you should be of the opinion that any of these so-called credits should be allowed, to show the Court to what extent they diminish the principal sum. And to do that you must ascertain their value as of a given date, before you can apply them as a credit to the principal sum.

Now, it is perfectly immaterial to us whether our friends on the other side continue the introduction of evidence to show the book value on January, 1861. They can do that if they think that has any actual bearing upon the value in June, 1863. It may be that they will ask you to allow them to introduce evidence of the value of the Richmond, Fredericksburg & Potomac stock at this time. I think you might as well introduce evidence of value about an estate in the moon, so far as it has any relevancy here; and yet they may be of opinion that such evidence would have some bearing upon the value of the stock in 1863. But the point that we ask your Honor to rule upon is that notwithstanding what we may think as to the probative value of proof as of some other date, that the date as of which you will ascertain the values is June 20, 1863. We do not ask you to foreclose West Virginia's counsel from introducing this evidence if they are so minded.

Mr. Holt: Mr. Harrison, pardon me, but do not misunderstand us as acquiescing in that suggestion. We are not introducing the date of 1861 as an embracement for 1863, we are introducing evidence on the date 1861 because we say that is the right date; that is our position.

The Master: That is as I understand it.

Mr. Harrison: The motion is as follows: "The plaintiff by her counsel moves that the Master do rule that June 20, 1863, the date of the creation of the State of West Virginia, and the date as of which the court ascertained the value of the property in the two States as a basis for the apportionment of the debt, is the date as of which the values of the alleged credits asserted in the supplemental answer of the defendant must be ascertained, should the defendant be found to be entitled to any of the said alleged credits." And we have

asked you to rule that June 20th is the date as of which the values of these credits must be ascertained, should West Virginia in the last analysis be found to be entitled to any. But we go further and ask that the Master will exclude from consideration any evidence directed to the fixing of any other date *for the ascertainment of said value.*

Now, what I said just now was that our friends may be of the opinion that the evidence of value at some other date than June 20, 1863, may have some probative value in determining values on June 20, 1863. If they think so they may introduce such evidence.

One suggestion is that your Honor will rule now and fix definitely the date so that we may govern ourselves accordingly. What we ask in the second paragraph will necessarily follow.

The Master: One is the logical sequence of the other?

Mr. Harrison: Yes.

The Master: Of course whichever way I rule, legal consequences follow.

Mr Harrison: It has been said on the other side, that the Court meant when it referred this case back, to reopen it, and thereby recognize that there was merit in West Virginia's contention, and that the intention of the Court was to suspend its former decision and give West Virginia the widest field for the introduction of evidence. Now, it was asserted here by my associate that we have travelled over a pretty wide field in this case. It is new to our friends on the other side because they are new in the case. But it is a pretty old story to the rest of us. And my friend and associate was within the bounds of accuracy when he said that there was already in this case all of the information furnished from the archives of this State that has any bearing upon any question that has ever been raised in it, including that raised now. And in support of that statement I cite an extract from the last opinion, delivered by the Chief Justice:

"Without intimating any opinion whatever as to whether the items with which the proposed supplemental answer deals entered in the process of calculation or reasoning by which

the sum due was previously fixed, and moreover without intimating any opinion as to how far the items embraced in the answer could serve as credits upon the sum previously found due, and therefore to that extent reduce the amount, we think it is obvious that most of the items embraced in the answer were contained in the Master's report and in any event all were available then for every defense now based upon them if their consideration had been pressed in the aspect and with the assertions of right now made."

Now, we press this motion upon your Honor, at this time because we do not think we should be required to travel over this ground again if there is no use in it. But I started to say, when I digressed, that it has been suggested or urged that the court meant to suspend its former decree. In other words, for the time being, to set aside what it has heretofore said and what it has heretofore done, and leave West Virginia to roam at will without restraint in asserting the defense that she is now making. But that is a mistaken view.

The Court said:

"Nothing in this order to vacate or change in any manner or in any particular the previous decree, and the same to stand wholly unaffected by the order now made or any action taken thereunder until the examination and report herein provided for is made and this Court acts upon the same."

Mr. Holt: It never said anything else.

Mr. Harrison: I do not think, therefore, that the Court intended to let down the bars and invite an indefinite investigation about matters that we are all familar with.

Now, to sum up, I say, if your Honor please, that it is important for you to fix the date as requested. Nothing will be gained by reserving your decision as to that. If it is to go to the Court, I think the surest and speediest way is to let it go to the Court now, and ask the Court for instructions. But I say, in my humble judgment, the Court has sufficiently indicated its opinion on that point. The Court from the beginning has shown that June 20, 1863, is in its judgment the date upon which the rights of the two States in the common property of the old State, must be adjusted.

I think our friends fully realize that fact. They will contend against it as a matter of course, but the record shows that our friends here appreciate the fact that they are contending for a proposition that in good conscience and in the light of reason and the decision of this Court cannot be allowed.

If your Honor will look at their answer you will find that wherever they allude to the evidence of the value of these so-called assets, they allege that they had the same value in June, 1863, that they did in January, 1861. They give two dates always. I might read one extract for example.

The Master: What page?

Mr. Harrison: I will read on page 27, of their answer where they are dealing with the Tennessee Railroad, and they say that they have the value there stated not only as of the 1st day of January, 1861, but as of the 20th day of June, 1863. Why did my friends assert that they had the same value in June, 1863, that they had in January, 1861?

The Master: They probably took chances once and got left, and did not want to take any chances again.

Mr. Holt: I think it is perfectly plain why, Mr. Master.

Mr. Harrison: We have all been in that situation no doubt.

On page 20, they recognize June 20th as the constitutional date fixed for the determination of their interests in the so-called assets of the common states.

The Master: In paragraph 4?

Mr. Harrison: Yes.

Mr. Holt: We could not have any debts either until we had an existence. So that horse is as long as it is broad.

Mr. Harrison: The answer throws a side light on the mind of the draftsman. He was doing the best he could, under the circumstances. But still the definite fact had to appear, and it did appear in the answer that West Virginia claims an equitable proportion of the stocks, etc., as of the 20th of June, 1863.

Therefore, we appeal to your Honor, if it commends itself to your judgment, to settle this question now, so that in the future conduct of this case we may know how to govern ourselves with reference to the introduction of proof and not be

wandering over a wide field without any limitation upon us. We say that this motion is not only in the interest of the economy of time, labor and money, but it is in the interest of justice. You cannot, in my opinion, meet the expectations of the Court unless you advise them definitely whether or not the principal shall be reduced, and if so to what extent; and you cannot do that without knowing the date as of which you will ascertain or determine the values of the so-called credits. And you cannot take two dates. And there is no reason why we should waste time in introducing evidence about two dates, any more than there would be about three or more. The question is the fixing of a definite date in order to state an account, and that date does not depend upon the evidence of values that is to be introduced; it depends upon the fact, the definite fact, that West Virginia's existence dates from *June* 20, 1863, from which date flow her rights as against Virginia. The Court has pointed the way for you by taking that date as the date to apportion the principal of the debt, which had been arbitrarily fixed at a prior date.

It seems to me, therefore, that all doubts disappear in the light of the facts, and the action of the court, and that the course for your Honor to pursue is plain and clear.

I submit the matter to your Honor.

The Master: Have you anything further, Judge Holt?

Judge Holt: Nothing further, I believe, your Honor.

The Master: Then I am prepared to announce the ruling. I think, in the first place, it is my duty to take such course in connection with this hearing as will most effectively promote the final, speedy and conclusive determination of the great issue between these two parties.

West Virginia has already had her legal day in court in connection with the controversies raised by this amendment. But that is a matter however that is not for my consideration. The Supreme Court has reached the conclusion that under the circumstances she is entitled to a further day in court, and that she has a right to be heard upon all these matters set up by her in this supplemental answer.

The motion made by ex-Attorney General Anderson, and

supported by him in a very able argument—and I may say that the whole discussion has been characterized by very great ability and legal intelligence—of course raises a very vital question; and its determination one way or another will come very near determining the rights of the parties to this controversy. If I sustain this motion and it is held ultimately that I erred in sustaining it, then the question comes back upon the hypothesis raised and urged by West Virginia.

The other course that is open to me is to hear all of this contention upon either of these hypotheses, reach my conclusion later if I find it necessary to do so, as to which is the right conclusion and perhaps report in the alternative to the court, so that the court will have before it the full contention of each party.

Now, in the first place, so far as this question is concerned, it is not only vital but it is an important legal proposition, and I desire to say that so far as I am concerned my mind is as yet open as to the proper conclusion to reach as to which is the right date upon which this value should be assessed. In a hearing of this importance and magnitude, if I were going to decide definitely which date should be fixed upon by me and as to which date the evidence should be introduced, I should feel bound to suspend the matter until I could more carefully examine the case and reach a conclusion. I would not want to take my chances in a decision right off the bench, immediately at the close of the argument. In reaching a conclusion here that I would hope would ultimately be sustained by the Supreme Court I should not want to reach a conclusion that would not be sustained, it would not be justice to either of the parties. And I doubt whether it would be wise for me, in the interests of both parties concerned, to undertake to definitely determine that specific date. I shall hold that only two dates are in issue, first, January 1, 1861, and second, June 20, 1863.

If I should rule in favor of either and rule erroneously this case comes back and we have to traverse this ground again. My judgment is that it is wiser for all concerned for me to hear the testimony that will be introduced by either party

directed to either of these dates, and if I determine ultimately to make an alternative finding, why then the court will have the benefit of my conclusion predicated upon either date.

This litigation ought to be terminated, it has been going on long enough. I do not want to take any action here that will lead the Supreme Court to say or feel that either party to this controversy has been foreclosed from presenting any legitimate evidence that may properly bear upon this controversy. If this had been a controversy between private parties this controversy here this morning would not be here before me, evidently, from the opinion of the Supreme Court. But the Supreme Court took a more liberal and broader view in respect to this controversy than they would ordinarily take. I do not want to give any such direction to the hearing here so that either party that may feel aggrieved may be in a position where the litigation can be further continued or further delayed. I can appreciate that if I ruled one way or the other I would shorten this case one-half, but on the other hand it might prolong it about one hundred per cent. My own judgment is that under the circumstances it is my duty to hear this case upon both hypotheses, first, that the value may be determined possibly as of the date of January 1, 1861; secondly, it may be determined as of the date of June 20, 1863; and I shall therefore so rule.

And also with this understanding, that I shall endeavor to present this case to the Court finally so that the Court will realize that at this hearing both Virginia and West Virginia have been fully and completely heard, that there is no legitimate legal consideration that has any proper tendency to affect the result on either of those dates, as to which both Virginia and West Virginia have not had the fullest opportunity to present all legitimate evidence. Now that does not mean that the door is opened entirely wide, but it means this, so far as I am able to determine it in a hearing of this sort, it means if I undertake to reach a conclusion, that is when I do reach a conclusion if I reach it upon either date, it will be done upon what I believe to be legal principles. And that means also that the evidence that is introduced for

the support of either hypothesis must be evidence that is legally competent in its character and has a legitimate tendency, whether it may be remote or otherwise, to establish the hypothesis contended for. Of course the case may develop so that it may be up to me to say whether evidence that is offered upon one side or the other may or may not be too remote. I intend, however, to give what is every reasonable latitude. I intend, however, to keep the case within what I look upon as proper legitimate limits. But subject to that, I want the parties to feel, and I propose to have the court ultimately to feel and know that you have both had ample, full and complete opportunity on each hypothesis. And I hope when you get through with this hearing to present it to the court in such shape that there will be an end to the controversy between the parties. It may take us longer, but it is an important case, and we are here for this purpose. And with these suggestions we will now proceed with the hearing.

Do I make the matter clear to the parties on both sides? I would like to say before we separate, I have not any question, from the attitude of the learned counsel on each side, because they are all distinguished men and evidently anxious to reach a proper and legitimate result, that none of them will be captious as to the application of the rule, but you must both bear in mind that the proceeding is being conducted upon legal principles, and while I hope to make a broad and proper application of them, we must both understand that we are to keep within the rules, and of course the counsel upon either side know what they are. And in the progress of the trial of course if anything comes along in which counsel upon either side feel that the counsel on the other side are going into things that are too remote, it is open to them to call the attention of the Master to it; and I shall not hesitate to rule. But subject to the general rules I hope both parties to this case in the end will feel and know that everybody connected with this case has had every opportunity that is possibly open to them in connection with this hearing, so that hereafter, while they may not agree with my conclusions, I

do not intend to have it left so that they will feel that they have not had the fullest and most complete opportunity to be heard.

At this point a recess was taken until 2:30 P. M.

AFTER RECESS

Continuation of the direct examination of

CONWAY W. HILLMAN.

Mr. Holt: On yesterday we took up the schedules in the order of A and B, then passed Classes C and D and came to E, because the blue prints for C and D at that time were not quite ready.

The Master: Now you propose to resume with C?

Mr. Holt: Now we come to C, which consists of 18 different items.

Q. Mr. Hillman, turning to the first item of Class C as exhibited with the answer, that is to say, the Orange & Alexandria Railroad Company, stock and loan, I will ask you if you have examined the records of Virginia or of the Orange & Alexandria Railroad Company with a view of ascertaining what shares of stock if any the State of Virginia owned in that company on the 1st day of January, 1861?

A. Yes, sir, I have.

Q. What was the number of shares owned by her of that stock on that date?

A. 17,490 shares.

Q. What was the par value per share?

A. $50 per share.

Q. You may further state whether or not she acquired

that number of shares on that date or owned them prior to that time?

A. She owned them on that date and had owned them for some time previous to that date.

The Master: Approximately how long?

The Witness: I should say at least from 1854, as we afterwards have a record of dividends declared in 1854 and paid in 1854.

The Master: Approximately seven years?

The Witness: It was before that date that they owned, I know it was on that date. All that information will be furnished to your Honor if it is desired.

The Master: At least seven years?

The Witness: Yes, sir, at least that.

Q. What was the total par value of the stock of that company owned by her?

A. $874,500.

Q. Did you examine the books of that company or the records of the Commonwealth of Virginia for the purpose of ascertaining the book value of that stock as of January 1, 1861?

A. I examined the records of the State of Virginia as published in Document No. 17 of the Auditor's Report for the State made annually for the different years, to determine that point. There are no books or records showing the Orange & Alexandria trial balances as of that date. I am informed by the Southern Railway, who now owns the property, that they have none of those records, they all having been destroyed by fire some years ago, and there is not extant as far as I know any record of the company itself, and therefore we have to take the reports made by the State.

Q. Based upon the reports of that company made to the State of Virginia, were you able to ascertain the book value, taking those reports to be true, of that stock as of January 1, 1861?

A. Yes, sir, I was able to establish the value for that stock.

Q. What was that value per share?

A. $53.32. Allow me to state that at the time that was made out I had taken the value and shown it as $100 per share. I have since made investigation that it was $50 a share. Therefore the book value would have to be $53.32 per share, but for every $100, the usual share value, it is worth $106.64; in other words, the stock has a $6.64 premium.

The Master: But per share of $50 the par value is $53.32?

The Witness: It was; 6.64 per cent. premium.

Q. Allowing that advance over the par value, what was the total value as of that date of the block of stock owned by Virginia in that road?

A. $932,566.80.

Q. Have you prepared a schedule wherein you have traced all of the 18 items embraced in Class C?

A. Yes, sir, I have.

Q. How have you marked that schedule?

A. In the upper right hand corner, Hillman Exhibit 3-A, and it should be marked in the upper left hand corner Class C, but unfortunately it has been omitted. I will ask that it be so marked for those holding copies, and will furnish the stenographer with one so marked.

Q. Will you now file that exhibit and mark the same Defendant's Exhibit No. 3?

A. I so file it, marked as requested.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, August 18, 1914, C. B.

The Master: The book value that you have given of $106.64, that is predicated on $100 par value; as a matter of fact, the par value was $50, and in order to be entirely accurate that should be $53.32?

The Witness: If it is treated as per share, yes, sir.

The Master: Your final computation I take it is predicated on $50 per share?

The Witness: Yes, sir.

The Master: With the premium that you allow?

The Witness: Yes, sir. I will say, your Honor, that the books of the company do not show the value of this share, how much it was, how much par was. I had to go to the side record and find it in their reports to the State, that it was at $50 per share; that is the reason it did not appear on the first original report.

By Mr. Holt:

Q. I have already inquired of you, Mr. Hillman, concerning the first item, that is the Orange & Alexandria Railroad Company stock on this Exhibit No. 3. I will now ask you by what process you ascertained the book value of each share of stock of that company on that date to be $53.32?

Mr. Holt: I may say to the Master and to the gentlemen on the other side that there is a supporting exhibit going with that first item on Exhibit 3, which explains its purposes, so we will turn to it. I will exhibit it in a moment.

Q. My question is by what process did you ascertain the book value of that stock per share to be on January 1, 1861, $53.32.

A. On the report of this road to the State for year ending September 30, 1856, all of which is found in Document No. 17 of the respective years which are hereafter mentioned in the Auditor's report to the State. There was a complete trial balance of this road wherein the par of the stock was $1,457,000 and the profit was $7,571.28, making a book value of $100.45 for each $100, or $50.23 for each share of stock.

Q. At $50 a share?

A. $50 a share. In 1856 no further trial balances are shown. We therefore took the profits as shown on Document No. 17 and added each year's profits over and above operating expenses, taxes and interest on the funded debt or floating debt to the surplus which had been determined for the year ending September 30, 1856, and in that way arrived at the available surplus or amounts which should be or would be distributed to the stockholders had the road been closed and the assets properly distributed, the corporation liquidated. We found that in 1857 there was $1,830,303.89 worth of stock outstanding. The odd amounts I would say

are due to the partial payment plan adopted for outside parties in paying for their stock.

The Master: Does that represent the actual amount of stock outstanding or the amount of money actually paid in for stock outstanding?

The Witness: It represents both, sir, as the stock was not fully paid until all assessments on it had been paid; it carried with it only the amounts that had been turned in, and if a man failed in his subscription the stock was only partially paid up.

The Master: Does this figure represent the amount actually paid in as distinguished from the amount atcually out?

The Witness: Yes, sir, from the amount actually paid in as distinguished from the subscriptions to the stock.

A. (Continuing.) The profits above operating expenses, taxes and interest were $61,441.15. There were dividends paid on the preferred stock of the company amounting to $5,954.63, leaving a total profit for the year above interest and dividends which could be carried into surplus of $55,486.52, which added to the profits from the previous year, gave us profit at the end of this year of $63,057.80. Dividing this surplus by the amount of outstanding stock we have a book value of the stock of $103.44 for every $100 worth of stock, or for each share $52.71.

Q. Now, what did you do, if anything, with the year 1858?

A. I proceeded in the same way for the year 1858, taking it from the same record, Document No. 17, but of the date of 1858 report.

Q. What did that give you as the book value for that year of the stock?

A. The book value was $104.93 for each $100, or $52.47 for each share.

Q. Tell us whether or not you investigated and treated the year 1859 in the same way?

A. Yes, sir, I did.

Q. What result did you arrive at there?

A. $105.30 for every $100 worth of stock, or $52.65 per share, book value.

Q. How did you ascertain the book value for the year 1860 of this stock?

A. I obtained that in the same way.

Q. With what result?

A. That it was worth $106.64 per $100 of stock, or $53.32 per share.

Q. Now how about the year 1861?

A. In 1861 the receipts of the road increased over 50 per cent. They had no expenses that year save an estimate by the superintendent. Because of the war the books were in Alexandria and this superintendent in Richmond had no access to them. He estimated his expenses at $220,000, which was $8,000 less than the previous year in spite of the fact that the earnings were over 50 per cent higher. If we had taken his figures it would have added for the year 1861 $263,909.85 to the profits of that year. I deemed that that must be erroneous and declined to take that into consideration in setting up the value of this stock. If my judgment is in error it can be corrected.

Q. What did you determine it to be worth, the book value of that date, 1861?

A. I did not determine the book value of that date.

Q. That is to say $106.64 for every $100 of stock represents if I understand you the 30th day of September, 1860, is that correct?

A. Yes, sir.

Q. In 1860, is that correct?

A. Yes, sir, the nearest date which we could get to January 1, 1861.

Q. Now, have the processes by which you arrived at this book value been set forth in an exhibit or tabulated statement prepared by you and marked Hillman Exhibit No. 3, Asset 1?

A. Yes, sir, they have, and I would ask that Class C be written in the upper left hand corner.

Q. Will you file this supplement exhibit to Exhibit No. 3 and mark it Defendant's Exhibit No. 3, Asset 1?

A. I file it, marked as requested.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset No. 1, August 18, 1914, C. B.

Q. You may state whether or not Defendant's Exhibit No. 3, Asset 1, correctly and truly—

The Master: Why does he call that asset 1, what is the significance of the language?

Mr. Holt: By turning to the answer, we were claiming each one of the matters as an asset in that class C, and he has just followed that.

The Master: These are not assets as distinguished from the other items that you have already been proving.

Mr. Holt: No.

The Master: Just simply used as a matter of convenience in connection with Class C?

Mr. Holt: Yes.

The Master: None of the other exhibits were marked assets, just Class so and so.

By Mr. Holt.

Q. You may state whether or not Defendant's Exhibit No. 3, Asset 1, correctly and truly sets forth the result of your examination of the books and reports concerning that company, and truly sets down the figures in relation thereto.

A. It does.

Mr. Robinson: I suppose it is understood that the words down there, value January 1, 1861, in themselves are no proof of value unless some other evidence is put in to support it.

The Master: I so understand it.

Mr. Holt: Of course we could not set down a conclusion.

The Master: Everything that you have given so far are book values.

Mr. Holt: Book values and also dividends declared, because the books tell us that that is another way of determining the actual value of the stock.

The Master: Then what conclusion they require is another thing, but what you fix as values upon these other schedules are the book values, and how much weight is to be given to that is a matter to be determined later. What weight that

is entitled to in reaching the actual value is a matter to be determined later.

Mr. Holt: Except of course the par value appears.

The Master: That is a feature of the book value.

Mr. Robinson: I was particularly referring to the matter of the loan.

Mr. Holt: You will find that the supporting sheets looked at the debtor.

The Master: All those matters are open to cross-examination.

Mr. Holt: Of course when we set down two columns of figures, 2 and 2, we expect that the addition will show 4 in the end, but the addition is to be made later on.

The Master: Yes, certainly. Take Exhibit 3, where it reads, with reference to the first item, book value $106.64, and then the next column is "Value January 1, 1861," that should read, book value January 1, 1861.

Mr. Holt: That is what that is intended for.

The Master: I think we had better have on here, before we get through with this exhibit, Brother Holt, as to this book value, in red ink, $53.32, because this $106.64 is apparently predicated upon par value.

Mr. Holt: That is it.

The Master: And it is just twice the par value. I take it the results will be the same.

Mr. Holt: Absolutely.

The Master: It may result in confusion unless you put that in.

Mr. Harrison: Write "book" in front of "value."

Mr. Holt: In the last column. Now it may be that we are wrong in part about that. However, we will develop that part of that sum total there is made up of the book value and an actual value, and that is why those stars are at the bottom, to make the explanation. We will develop that in a moment though, and make it clear, your Honor.

The Master: Well, so far as there is any difference in character between the factors that enter into an aggregate, that you can explain on the record. The main thing is, though,

that as the testimony goes in, let it go in plain and clear so that there won't be any confusion between us as to what it means. This suggestion of yours, I take it, Judge Holt, does not relate to the par value proposition.

By Mr. Holt:

Q. Returning now to Exhibit No. 3, we find under the first item, Orange & Alexandria Railroad stock, the word loan, and thereafter under the word par $398,650.60, and the same amount carried out in the last column, with a star before it, and after the word star in the bottom margin, "Actual value January 1, 1861." What do you mean by these entries upon this exhibit? Please explain the same and tell us how you arrive at it.

A. I mean that that was the actual cash value of the principal of the loan on January 1, 1861.

Q. Well, who made the loan and to whom? Let us get a little history of it.

A. It was a loan made by the State of Virginia to the Orange & Alexandria Railroad Company, for which the Orange & Alexandria acceptances or acceptance were taken.

By the Master:

Q. When you say actual value, as I take it, you proceed on the assumption first that it was an actual existing loan, and second that the Railroad Company was amply responsible to pay and that the debt would be collected in full, that is what you mean by that, is it not?

A. Yes, sir, and the exhibit which I am just filing as a subsidiary paper shows those facts, both the value of the loan on that date and its subsequent payment in full.

By Mr. Holt:

Q. Now, have you prepared an exhibit, Mr. Hillman, explaining this loan to the Orange & Alexandria Railroad Company, in addition to the supporting exhibit just filed with reference to stock, marked Asset No. 1—have you prepared an additional supporting exhibit relating to the loan?

A. Yes, sir, I have.

Q. How have you marked it?

A. It is marked Hillman Exhibit 3 and 4 in the upper right hand corner, and immediately below it, sheet 1, asset 1. There is also a sheet 2 of asset 1 and a sheet 3 of asset 1, it taking three sheets in order to run this asset down and show its full payment. On the upper left hand corner is marked Class C and Class D, for the reason that there are references to both classes on this supporting exhibit, since it was settled in full with interest on the principal as well as the principal, and necessitated both being carried on one exhibit with a double reference as to the class at the top, Class C being principal of stocks or other securities, and Class D being interest, dividends, etc., which were due; and it became necessary to show the amount of interest which was due and earned at the same time that the principal was due, it became necessary to carry these upon the same exhibit in order to thoroughly show how much was principal, how much was interest, and how much of each was due. Therefore, these supporting papers will refer both to Class C and Class D.

By the Master:

Q. So far as these supporting exhibits refer to both classes, do they contain all of the data relating to the two classes?

A. Yes, sir, they do.

Mr. Holt: If I understand you, your Honor, you have Class C, which is made up of the stocks of certain companies, and loans made to certain companies; in addition to that you have Class D, which confines itself exclusively to the interest on those loans and to the dividends on those stocks. Now, while he is treating in Defendant's Exhibit No. 3 the subject of stocks, he has a separate and distinct set of supporting exhibits, the first of which has been introduced, and when it comes to the subject of loans he has another set of supporting exhibits, and they are marked C and D because they are the supporting exhibits for both Class C and Class D.

The Master: For both principal and dividend?

Mr. Holt: Yes.

The Master: And he is prepared of course to separate the details?

Mr. Holt: Yes, sir.

By Mr. Holt:

Q. Mr. Hillman, will you file your supporting exhibit, that you have marked Hillman Exhibit 3 and 4, Sheet 1, Asset 1, Class C and D, with and as a part of your deposition and mark it Defendant's Exhibit 3, Sheet 1, Asset 1?

A. I do file herewith the exhibit in question, marked Hillman Exhibit 3, Sheet 1, Asset 1, Sheet 2 of Asset 1 and Sheet 3 of Asset 1, in the upper right hand corner, and Class C and Class D in the upper left hand corner.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Sheet 1, Asset 1, August 18, 1914, C. B.

Q. Will you take the exhibit last referred to and explain to the Master how you have indicated therein, or explained therefrom how you have ascertained the value of the loan to the Orange & Alexandria Railroad Company, heretofore referred to, to be worth $398,670.60 on the 1st day of January, 1861?

The Master: In the first place that is the full amount of the loan?

Mr. Holt: Yes, sir, that is the full amount of the loan.

A. On page 241, ledger B, under the sub-heading of B, A being stock and B being the loan—

The Master: Unless we keep the distinction in mind, the exhibits will be a little confused. The situation is this, first we have Defendant's Exhibit 3, which contains 19 items. Then we have Defendant's Exhibit 3, Asset 1; then we have Defendant's Exhibit 3, Sheet 1, Asset 1, Defendant's Exhibit 3, Sheet 2, Asset 1, and Defendant's Exhibit 3, Sheet 3, Asset 1. Am I right about that?

Mr. Holt: That is right. I am confining myself to one phase of the exhibit.

The Master: I understand that the witness proposes to give the facts upon which he reached his conclusion that this loan was worth its full face value, and while you have the detail on here you desire the oral explanation to elaborate the detail?

Mr. Holt: That is it exactly.

The Witness: This exhibit has both A and B on it, A being the stock and B being the loan. We are examining the loan for the present. The loan is found on page 241, ledger B of the internal improvement fund to be carried there at par value of $400,000, which was the original loan. This loan was finally paid off and settled—

By the Master:

Q. Where you say carried at par value, there is not any such thing as par value of a loan.

A. That was the original loan and was the way it was carried on the books at that date.

Q. Par value is predicated upon stock, not upon a loan. You mean to say that the books show that that was the amount of the loan on that date?

A. Yes, sir.

Mr. Holt: I think par value is a little misleading, except that his explanation shows what he means.

The Master: A loan is one thing and stock is an entirely different thing.

The Witness: The settlement of this loan, its final settlement, is found on pages 389 to 392 of Journal N of the Public Works, which is the internal improvement fund, the two titles being used interchangeably on the books, as follows, starting out with the $400,000, the amount of the loan, it was shown that interest up to February 23, 1859, amounted to $6,075.31, that on February 11, 1859, the Railroad Company paid in on account of interest or on account of the loan, $5,250.

Q. What was the fact, on account of the loan or on account of the interest?

A. It is on account of both, if your Honor will allow me just a moment.

Q. How did the entry read?

A. The entry reads, for interest on loan. They were charged seven per cent. The understanding was that six per cent. of that was paid on the loan and the other one per cent. of that was to go to liquidation of the security, so that it would be partial payment and wipe it out, and this is the plan that is followed here in wiping it out.

Q. Do you get that from the documents which stated the original loan?

A. No, sir, from the documents which show the settlement.

Q. Was one per cent. sort of a sinking fund?

A. Yes, sir.

Mr. Holt: It was an application to principal, the one per cent.

The Witness: The Virginia bonds had the same provision in them, and they were thereby wiped out at a certain date. These loans were made as a general thing on the same plan. That left on February 23, 1859, $625.31 to be added to the principal. On the date of that same date the railroad company paid into the treasury $2,154.71 on account of their loan, which left the amount of the principal on the loan $398,670.60.

Q. How does that credit entry read, I mean on the book?

A. There is no credit on the books until we come to the final settlement. On the original books it meant just simply a payment of interest on loan.

Q. That is the item of $2,154.71 appeared on the books as payment of interest on loan?

A. Yes, sir, payment of interest on loan. It was only when we came to the settlement that we determined how much was applicable to the principal and how much to the interest. That left $398,670.60 due on the principal of the loan on February 23, 1859. On September 15, 1859, the interest was again calculated, amounting to $10,415.94, upon which the road paid $9,086.81, thus failing by $1,329.33 to meet their interest payment. The interest due to April 17, 1860, was $14,019. The company paid $9,840.47, thus failing to meet their interest payment by $4,178.53.

Q. Does that $14,019 include the balance of interest overdue?

A. No, sir, it was a new calculation of interest.

Mr. Holt: You will find that that thirteen hundred, your Honor, is set out in the column just above.

The Master: Oh, yes, that makes up the aggregate.

The Witness: On July 1, 1860, there was due interest of $5,035.18, and the company paid on that date $4,139.53, being $875.65 less than their full interest. Therefore up to July 1, 1860, there had been no payments upon the principal of this loan, and the loan remained at $398,670.60, since the next payment of interest on this loan did not occur until October 20, 1862, as will be seen from the first entry upon sheet 2 of this exhibit. The side calculations at the bottom here, carried away over to the extreme right, on the last lines of sheet No. 1, are to determine the amount of interest which was due upon January 1, 1861, and will be explained when we come to Exhibit No. D.

Q. When you say there have been no payments made on account of principal up to 1860, you left the item of $2,154.71 to be accounted for later, because that evidently reduced the principal according to your figures here, and operated as a partial payment on principal—you left that item I suppose to be figured in later on, when you say there had been no payments on account of principal up to that date?

A. Oh, yes, that had already entered into the payment on account of principal.

Mr. Holt: The statement was that since the ascertained payment of principal of $398,000 no further payment of principal had been made.

The Witness: We will refer to this exhibit in chief again, your Honor, when we come to Exhibit D. I will call your attention to the fact that it is progressive, Sheets 1, 2 and 3, and finally shows the payment of the loan in full upon Sheet 3 of this exhibit, showing that full value had been received for the loan.

By Mr. Holt:

Q. Does the Sheet 3, Asset 1, show when the loan was finally settled in full?

A. Yes, sir, October 28, 1872.

Q. Then, as I understand you, going back to the main exhibit No. 3, where you set down the value of this loan at three hundred and ninety-eight thousand and some dollars as of January 1, 1861, you base that conclusion upon Sheets 1, 2 and 3, and treat it as of that value as of that date in consequence of the fact that that was the amount originally loaned and that it was finally paid with interest?

A. Yes, sir. Allow me to just correct slightly, it was not the amount which was originally loaned, but it was the amount of the original loan which remained after the partial payments which had been made upon it before the 1st of January, 1861.

Q. The original loan was $400,000, was it?

A. Yes, sir.

Q. We come now, Mr. Hillman, to the second item on Exhibit No. 3, being Richmond & Danville Railroad stock. State whether or not you examined the same records for the purpose of ascertaining the stock ownership by the Commonwealth of Virginia in that company.

The Master: One moment, before you pass the other exhibit, the balance due on the loan, if I get the exhibit correctly, with the capital stock of the road, under some arrangement was taken care of by bond issue and not paid in cash? I infer that from the appearance of the exhibit.

Mr. Holt: I would like the witness to answer that question if he will do it promptly and go along and relieve me.

The Master: Mr. Witness, please state what the fact is with reference to the manner in which the balance due on this loan was finally paid, whether or not it was paid in cash as a separate item, and if not paid in cash, if it was adjusted and how it was adjusted.

The Witness: It was adjusted by a payment of $834,398.88 in Virginia State bonds which carried with them unpaid in-

terest of $186,548.49. Then in addition to that they anticipated their payments. They were to pay by installments of one, two, three, four, five and six, at six months intervals. They anticipated those and were allowed a discount for those anticipations, which are shown in detail on the last page, the total being $1,137,906.99, which happens to be just $1.02 over the amount of the loan.

The Master: The amount of the loan and stock?

The Witness: The amount of the loan and stock, yes, sir.

The Master: That is to say, you have an entry there of par of stock $874,500, which makes your estimate of $1,137,906, that with the balance due on the loan was taken care of by surrender to the State of these bonds with the overdue interest thereon and these anticipations which you have testified to?

The Witness: Yes, sir, discounting the payment. In the meantime the reduction of the loan from the $400,000 down to the $212,000 shown at the top of Sheet No. 3 of Asset 1 had been paid in money. The interest payments or these payments of so much per annum, annuity payments they might be called, had reduced the loan from its original value of $400,000 down to $212,844.94 as shown upon the first entry of Sheet No. 3 of Asset No. 1, and those payments which had entered into that reduction of loan had been made in money and not in bonds.

The Master: Was the $874,500 in par value of stock held by the State of Virginia in this road?

The Witness: Yes, sir.

The Master: And the road was therefore paying the State the amount of this stock in this adjustment?

The Witness: Yes, sir.

The Master: As well as the amount of the balance due on the loan?

The Witness: Yes, sir.

Mr. Holt: As I understand, the date at which the settlement was effected was October 17, 1872?

The Witness: Yes, sir.

The Master: On March 28, 1872, or October 17th, which date?

The Witness: October 28th, the last payment was made.

Mr. Holt: October 28, 1872.

The Master: That is when the State bonds were returned?

The Witness: Yes, sir. You will notice that there is a payment on March 28th, which is after the first installment.

The Master: Yes.

The Witness: But whatever it was it does not seem to have anything above it at that time, and the totals of it are included in the bonds which are listed below, which is the reason that a heavy line is drawn under it, and while there is nominally a payment on March 28, 1872, yet the total of that installment together with the following installment is all settled on October 28th, and exactly what became of whatever was turned in for that first installment of $188,000 the books are silent, but the next entry, October 28, 1872, accounts for the entire price of the stock and loan.

The Master: Held by the State?

The Witness: Yes, sir.

The Master: I understand now the items. I was not quite certain that I understood exactly the method of adjustment.

By Mr Holt:

Q. Now, coming to the second item of Exhibit No. 3, Richmond & Danville Railroad stock, I will ask you, Mr. Hillman, whether or not you have examined the same records and books with a view of ascertaining the stock ownership if any of the Commonwealth of Virginia in that railway company on the 1st day of January, 1861, and prior thereto.

A. Yes, sir, I did.

Q. What number of shares did she own in 1861, January 1st, in that road?

A. 12,000 shares of stock, at a par value of 100, but at a cost to her of $1,188,598.50.

Q. Was that purchase price above or below par?

A. It is slightly below par.

The Master: Does that appear on the exhibit, does it show these details?

The Witness: Yes, sir; that appears on the original Exhibit 3-A, 12,000 shares—

By Mr. Holt:

Q. Mr. Hillman, I suppose that by dividing 12,000 into $1,188,598.50 you would ascertain what was paid per share, would you not?

A. Yes, sir; it would be almost exactly $99 per share.

Mr. Harrison: Where do you find that?

Mr. Holt: I have asked him a question. He has the data for the calculation, but not carried out.

The Master: That particular computation does not appear.

Mr. Holt: No, it does not appear.

The Master: Does anything appear on the books to show how it happened that that peculiar price of $99 was paid?

The Witness: No, sir, there is nothing on the books at that date to say how many shares the State acquired. The total cost of the shares is all that is shown on the books until we come to the settlement, and then it was shown that the State did own 12,000 shares and had acquired them at a cost of $1,188,598.50, but until we come to the settlement nowhere does the number of shares that they held show.

The Master: Then on account of these facts which you have just stated you make your deduction that it cost the State about $99 per share?

The Witness: Yes, sir.

By Mr. Holt:

Q. Did you examine the books of that company or the record of Virginia with a view of ascertaining the book value per share of that stock on January 1, 1861?

A. Yes, sir, I did.

Q. What did you ascertain from there its book value to be?

A. On September 30, 1860, the book value was $137.37 per share, the 100 being par of the stock. I did not bring

the value any further than this because it was the nearest date to January 1, 1861.

Q. Your last column then of $1,632,777.76 represents, as I understand it, the book value of the 12,000 shares, the total book value as of September 30, 1860?

A. Yes, sir.

Q. Now, have you a supplemental exhibit that shows the detail of your calucations and your processes in arriving at this book value?

A. Yes, sir, I have.

Q. How have you marked the schedule just referred to?

A. Hillman Exhibit No. 3 in the upper right hand corner, Asset No. 2.

Q. Will you file this schedule as a part of your deposition and mark the same Defendant's Exhibit No. 3, Asset No. 2?

A. Yes, sir, I file it and it is so marked.

Admitted in evidence and marked Defendant's Exhibit No. 3, Asset No. 2, August 18, 1914, C. B.

Q. Mr. Hillman, will you please explain to the Master this Defendant's Exhibit No. 3, Asset No. 2, showing the process by which you arrived at the par value per share of the Richmond & Danville Railroad Company stock as of September 30, 1860?

A. The same methods were pursued in this case as in the case of the Orange & Alexandria Railroad, and for the same reasons, there being no records as far as I could find outstanding of this Richmond & Danville road. The Southern Railway Company stated to me personally that all their records concerning it were burnt and they had nothing to show. I was compelled therefore, as in the Orange & Alexandria case, to go back to the original record filed with the State.

The Master: When did this fire take place?

The Witness: I do not know the date of the fire. I was so informed of that by Mr. Plant, the comptroller of the Southern Railway, five weeks ago in Ashville, North Carolina where I was in attendance on a railway rate case and made

the request of him to allow the examination of these books. I understand that there has been considerable correspondence since to see whether they could be obtained from other officials of the company, though the comptroller is the proper custodian, and that those also are without avail, that they have not got them.

The Master: You did not learn when the fire took place?

The Witness: I did not ask that, but I understood it was some years ago.

Mr. Holt: I was also informed by Mr. Thom, the general counsel of the Southern at the present time, that those ancient records were destroyed by fire several years ago.

The Master: Was this an accidental destruction or intentional?

Mr. Holt: Accidental.

The Witness: I would say, your Honor, that it was long before this case was thought of.

The Master: I did not mean that. I was wondering whether they were old records that they had got through with and had burned up or whether the fire was accidental.

By Mr. Holt:

Q. What was the last trial balance if any you found for this road in the records of Virginia?

A. On this same public document No. 17 which has been mentioned before, in the report of 1856, in the trial balance of this road, wherein the par of the stock is shown as $1,975,040.

The Master: What was shown on that trial balance?

The Witness: The par value of the stock.

The Master: Is that par value or book value?

The Witness: The par value of the stock on the books of the company.

The Master: You mean the total stock?

The Witness: Yes, sir.

The Master: Not stock held by Virginia?

The Witness: No, sir.

The Master: Then that explains an apparent discrepancy on these schedules. I understand that this item of $1,975,040 was the total capitalization so far as stock is concerned of this railroad, but that the State of Virginia held only $1,200,000 in par value, is that it?

The Witness: Yes, sir, certainly.

The Master: That explains it.

By Mr. Holt:

Q. Mr. Hillman, you might run through with this since we have started on it. Hereafter I would like to abbreviate in some way if I can.

A. In 1857 we find that the operating profit is $139,489.12, which added to the previous profit was $337,008.02, or $117.04. Here again the method of reporting to the State had been changed and we were without complete trial balances and had therefore carried the profits from year to year above operating expenses, taxes, interest and dividends as a profit which should be added to the profit and loan account of the last trial balance which we had on hand. In 1858 there was added a profit of $154,305.76, making a total profit up to date of $491,313.78, showing the stock to have a book value of $124.80. In 1859 there were added $103,287.94 to the profit and loss account, making the surplus $594,601.72, or $130 per share. In 1860 there were added $145,821.08 to the previous surplus, making $740,422.80 per share, which gives a book value of $137.37 per share of $100 of the Richmond & Danville stock at the nearest date to January 1, 1861. In order to avoid any trouble or criticism I have applied that value which I found of $137.37 to the amount of money which the State had invested in this road and not to the 12,000 shares which it had invested in the road.

The Master: You have treated the actual purchase price as par value instead of nominal par value?

The Witness: Yes, sir, for this purpose only.

The Master: For the purpose of reaching the book value?

The Witness: Yes, sir.

The Master: Had there been any dividends declared and paid by this company during this period?

The Witness: Yes, sir, in 1859—

Mr. Holt: That is shown in Class D.

The Master: Then I am anticipating. Does that complete that branch of it?

Mr. Holt: That completes that, I think, your Honor.

The Master: Then we will suspend for five minutes.

Mr. Holt: My idea was simply to show, Mr. Harrison, the book value of that Richmond & Danville Railroad stock by the supporting exhibit, asset No. 2.

Q. What was the exhibit that you just testified to, how was it marked, Mr. Hillman?

A. Hillman Exhibit No. 3, Asset 2, in the upper right hand corner; it should be marked Class C in the upper left hand corner.

Q. Was there anything further that you wanted to explain with reference to the stock of the Richmond & Danville Railroad Company? You have given us its book value on Exhibit No. 3 and the process by which you arrived at it on No. 3, Asset 2, have you not?

A. Yes, sir.

Q. You completed all there was on that Asset No. 2 sheet, did you not?

A. Yes, sir.

Q. I will take up the loan now of the Richmond & Danville, and that is where you get into a sheet that has both the stock and the loan mixed up?

A. Class C and D in the upper left hand corner.

Q. Mr. Hillman, we come now to the loan to the Richmond & Danville Railroad. It is set down on Exhibit No. 3 as of the value of January 1, 1861, of $565,803.34. Have you prepared a supporting exhibit showing how you have arrived at that value of that loan as of that date?

A. Yes, sir, I have.

Q. How have you marked the Exhibit?

A. Hillman Exhibit 3 and 4.

Q. Is it not Exhibit No. 3, ought it not to be so filed at least, Exhibit No. 3? Is there more than one sheet of it?

A. There are two sheets of it.

The Master: One is not marked at all, and the other one is marked Sheet 2.

Q. Go on and tell how you have marked it?

A. I have marked it Hillman Exhibit 3 and 4, Asset C-2, Asset D-2, in the upper right hand corner; and Class C and Class D in the upper left hand corner.

Q. Will you file this exhibit and mark it Defendant's Exhibit No. 3, Asset 2, Sheets 1 and 2?

A. Yes, sir; I now file it marked as you have stated.

The sheets were admitted in evidence and marked Defendant's Exhibit No. 3, Asset 2, Sheets Nos. 1 and 2, August 18, 1914, C. B.

Q. Please take the exhibit just now filed and explain to the Master how you arrived at the value of the loan to the Richmond & Danville Railroad Company, as set down in Defendant's Exhibit No. 3.

A. The loan is shown upon Ledger B at folio 240 of the Internal Improvement Fund as of January 1, 1861, to have a value of $600,000.

By Mr. Harrison:

Q. To have a value, do you mean that is the amount of the loan?

By the Master:

Q. You mean that is the entry on the book?

A. That is the entry on the book, yes, sir.

The Master: That settles that, and it is all you can say about it. Now you establish the value of the loan by other evidence. The entry speaks for itself.

By Mr. Holt:

Q. When you start out with your answer I wish you would state what sheet you are testifying from. I am looking mainly on one, and you seem to be speaking from No. 2?

A. On sheet No. 2 of this exhibit is shown an entry from Folio 240, Ledger B, Internal Improvement Fund, date January 1, 1861, $600,000, for the Richmond & Danville loan. Due to the partial payment plan on which this and other loans were computed, as shown by page 12 of Senate document and Journal No. 12, in 1881-82, its value on September 30, 1860, was $567,786.54.

By Mr. Harrison:

Q. You mean that was what was shown on the books?

By the Master:

Q. You mean that the books show that on that date the amount of that loan, after those computations and entries were made and taken into account was $567,786.54—that is what you mean, is it not?

A. Yes, sir.

By Mr. Holt:

Q. The value, Mr. Hillman, is what we are trying to prove; we do not want to assume it.

The Master: Get the amounts in the books in the first instance, and then follow it up by trying to show its value.

Mr. Holt: Proceed, Mr. Hillman?

A. Following this plan we arrive at a value on January 1, 1861, as follows—these now are my computations, based on the same plan, since the next entry on this book which I have quoted, Senate document and Journal, carries it far beyond January 1, 1861.

By the Master:

Q. Do you mean by that that this item that you are now giving is not predicated upon actual entries on the books or that it is predicated upon items of yours independent of the books?

A. The item at which I am going to arrive is predicated upon a computation.

Q. But the computation does not appear upon the books?

A. No, sir, for the reason that the next computation is a year later on, on this book. They make no computation January 1, 1861. The next computation is September 30, 1861, so I have to follow the same plan.

Q. Is your computation predicated upon entries in the books and made to fit the date of January 1, 1861?

A. Yes, sir.

Q. So that the computation is predicated upon actual entries? You say following this plan—when you say following this plan, you mean that you take the entries upon the books, and while they only carry you up to September 30, you make a computation on the same plan from September 30, 1860, up to January 1, 1861?

A. Yes, sir.

Q. You have to make the computation in order to get the figure on that date, there being no computation of January 1, 1861?

A. Yes sir. That would add interest from September 30, 1860, to January 1, 1861, of $8,516.80. There would then be due an annual payment upon this stock.

By Mr. Holt:

Q. Is it stock or loan?

A. Upon this loan interest was accrued on January 1st of $21,000, being a six months interest for annuity payments. As the computation had already been made on the Senate document up to September 30th, we are only entitled to a credit of one-half of that amount, or $10,500. We have therefore deducted $10,500 from the sum of the principal on September 30, 1860, plus interest up to January 1st, which amounted to $576,303.54, and thus obtained the value of this loan on January 1, 1861, as $565,803.34.

By Mr. Harrison:

Q. What do you mean by less one-quarter annuity of $42,000?

A. Each year they were compelled to pay 7 per cent. on $600,000, which made $42,000. They had established in this Senate document the value of this loan—excuse me, the face of this loan, as $567,786.54 on September 30, 1860. There was therefore due on January 1, 1861, one-quarter of the annual payment, which amounts to $10,500.

Q. Well you add first $8,516.80 of interest up to January 1st, from September 30th?

A. Yes, sir.

Q. And then deduct the one-quarter of the $42,000?

A. Yes, sir.

Q. Was that paid?

A. Yes, sir, that was afterwards paid. On February 4, 1861, the $21,000, of which this $10,500 was a part, was paid into the treasury of Virginia.

By the Master:

Q. How was it paid, in semi-annual installments?

A. Yes, sir.

Q. And you have treated it as a credit here in order to carry both sides of the account up to January 1, 1861?

A. Yes, sir. It was due January 1, 1861, but it was not paid until February. There was no account made of that lapse of interest, however.

By Mr. Holt:

Q. What was the final disposition of this loan as shown by this exhibit, if so shown?

A. The loan was finally paid on July 8, 1884; as shown upon the Journal N, Board of Public Works, Folio 631, on July 1, 1882, for the first payment—

Q. What was that payment, how much and what manner of payment?

A. $282,000 of coupon bonds of the State of Virginia and fractional certificates of $10,436.41.

Q. When was the next payment on it made, and where do you get the record on it, if you get any record?

A. The next payment was made on September 28, 1882, folio 632 of Journal N, Board of Public Works Department, wherein there was paid in State bonds $38,500, and fractional certificates of $13.76. On the same date, page 635 of the same book, there was paid in bonds of $91,996 and fractional certificates of $86.91. On July 8, 1884, from the record book of the Sinking Fund, on file in the Second Auditor's office, folio 285, it was shown that $15,700 of bonds was turned in, and fractional certificates for $166.37, and cash for 55 cents, making a total payment of $438,900, to which amount the principal of this loan has been reduced on the partial payment plan upon this date.

By the Master:

Q. How did you happen to get that last item in out of its order in your exhibit, was there any reason for that?

A. No, sir, it was accidental, and I do not know how it occurred.

Q. I did not know but there might be some occasion for it?

A. No, sir, it was accidental. I do not know how it occurred.

By Mr. Harrison:

Q. In that connection, does your record show when those bonds were issued?

A. No, they do not.

Q. Do you mean to say the State records do not show? I asked you if your record did not show?

A. My record does not show.

By Mr. Holt:

Q. Have you examined the records of Virginia or the records and books of the Richmond & Petersburg Railroad Company with a view of ascertaining the ownership of stock in that company by the Commonwealth of Virginia on and prior to the 1st day of January, 1861?

A. Yes, sir, I have.

Mr. Harrison: Before you continue that subject, Judge, I would like to call your attention to the fact that we were handed a sheet in connection with the Richmond & Danville Road, dealing with stocks, showing their disposition, I suppose, which has not been testified to.

Mr. Holt: The point about it is just this—

Mr. Harrison: If it is not intended to be, I want to know.

Mr. Holt: A part of that exhibit we now use and a part we do not use until we come to Class D.

Mr. Harrison: You did, however, use that same sheet with reference to the Orange & Alexandria?

Mr. Holt: But only for the purpose of showing what it showed on the subject of loans.

The Witness: But I think a red pencil should be drawn across those to show what I have not testified to. Owing to the haste in which those exhibits were gotten up, the final disposition of the stock was not shown upon them.

The Master: I should like to have the counsel see that that is taken care of, because if I should find that a certain schedule was not supported by oath I should have to disregard it.

Mr. Holt: It was not my intention to make any inquiry at all concerning the disposition of those stocks.

The Master: But you do intend to inquire about it later?

Mr. Holt: Yes, when we come to Class D it may become necessary. What I am trying to get through with is this omnibus Exhibit No. 3. Take the Orange & Alexandria by way of illustration, it sets down thereunder the number of shares of stock and what its book value was on a certain date. Then we come to a supporting exhibit, which is Asset No. 1, Exhibit 3, which shows the process by which he arrived at the book value of that stock set down in the omnibus exhibit. Then we come to loan on that railroad, and then we come to supporting exhibits to show the value of that loan on a certain date. But those exhibits have certain things on them which I did not intend to inquire about at this time.

The Master: Of course it will be understood by counsel on both sides that the blue prints submitted by Mr. Hillman are not proof and go for nothing, unless supported either by Mr. Hillman's evidence or that of some other party. If my attention is later called to the fact that it is not supported by oath, the blue print of itself will go for nothing.

Mr. Holt: Of course the Master understands that we have reserved the right to inquire about those things if we choose.

The Master: Oh, yes, it is open to anybody at any time until the hearing is closed to do that. But I would like to have the counsel see that whatever they desire is at some time in the case put in. My recollection is that in the main you have supported all the schedules you have put in here before.

Mr. Holt: Yes, sir, we have undertaken to do so at least.

By Mr. Holt:

Q. How many shares of stock did the Commonwealth of Virginia own in the Richmond & Petersburg Railroad Company on January 1, 1861, if any?

A. 3,856 shares, par value of $100 each.

Q. Have you undertaken to ascertain from the books and records of Virginia, examined by you, or any other books and records, especially of this company itself, the book value of its stock as of January 1, 1861?

A. Yes, sir, I have.

Q. What have you ascertained it to be?

A. At the nearest date to January 1, 1861, which is September 30, 1860, I have ascertained it to be $121.86 per share, the shares being $100.

Q. Have you prepared a schedule or exhibit showing the processes and the figures and the references to books from which taken, by which you have ascertained that book value?

A. Yes, sir, I have.

Q. How have you marked it?

A. I have marked it in the upper right hand corner Hillman Exhibit No. 3, Asset 3.

Q. Will you file it now as part of your deposition and mark it Defendant's Exhibit No. 3, Asset 3?

A. I now file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 3, August 18, 1914, C. B.

Q. Does this exhibit show the processes by which you arrived at the book value per share of the Richmond & Petersburg Railroad Company on January 1, 1861, or September 30, 1860?

A. Yes, sir, it does.

Q. Will you please go over this exhibit in detail and explain to his Honor how you reached the par value per share of $121.86?

The Master: As far as I am concerned, Judge, I do not know how it may appeal to the other side, but *prima facie*, as far as I go, all you need to ask him is whether this blue print correctly states the method of computation; unless you desire it more in detail as far as you go, leaving the criticism of it to the other side.

Mr. Holt: I was going to do that after the process was thoroughly understood by going over one exhibit.

The Master: So far as I am concerned it is sufficient to have the witness state that the exhibit states accurately the computations that he has made.

By Mr. Holt:

Q. You may tell the Master, Mr. Hillman, whether or not this exhibit, Hillman No. 3, Asset 3, correctly and truly sets forth the result of your examination and your calculation indulged in in making or ascertaining the book value of this stock?

A. Yes, sir, it does.

Q. Under the third item on Defendant's Exhibit No. 3, under the heading of Richmond & Petersburg Railroad stock, I find the item Dividend bonds, $33,408. What is meant by that item?

A. It means that in lieu of issuing dividends in cash for some prior years, the Richmond & Danville had issued a bond to its stockholders to represent the dividend, of which the

State had received $33,408, which it had on January 1, 1861, as a dividend.

Q. What road were you talking about then?

A. Richmond & Petersburg.

Q. You said Richmond & Danville?

A. I will ask the stenographer to correct it if I did.

Q. Have you prepared an additional exhibit on this item?

A. Yes, sir, I have.

Q. How have you marked it?

A. Hillman Exhibit No. 3, Asset 3, Sheet 1, in the upper right hand corner; Class C and D in the upper left hand corner.

Q. Will you file this exhibit and mark it Defendant's Exhibit No. 3, Asset No. 3, Sheet 1, as part of your deposition?

A. I now file it, so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset No. 3, Sheet No. 1, August 18, 1914, C. B.

Q. You may tell us whether or not this exhibit truly sets forth the result of your examination of the records of Virginia or the books of the company involved and the calculations made by you therefrom?

A. Yes, sir, it does.

Q. Does this exhibit give the reference to the volume, file, book, page, etc., of the records examined by you upon which these conclusions are based?

A. Yes, sir, it does. Perhaps I had better call attention to the fact that the dividend bonds were cashed in in this instance.

By the Master:

Q. They were paid in cash by the railroad?

A. Yes, sir.

Q. With interest?

A. Yes, sir, interest being kept up on them continually

from the time they were issued until the time they were paid off, paid regularly.

Q. That is, interest on these dividend bonds was paid when due by the railroad company?

A. Yes, sir.

Q. The item of inteest does not appear on this schedule; I do not see any item of interest here.

A. No, sir, it does not appear, as it had been paid, upon these dividend bonds; it had been paid, though due January 1st, it had been paid right up to this date by an entry on December 31st.

Q. Whatever the fact was about the interest, the interest that had accrued was paid?

A. Yes, sir.

Q. And you also said that the principal of these bonds was paid to the State in cash November 7, 1861?

A. Yes, sir.

Q. What is the entry that you have, dividend due January 1, 1861, paid February 28, 1861? That is in addition to the bond dividend?

A. Yes, sir.

Q. That is in addition to the dividend paid by bond?

A. Yes sir. The dividend paid by bond had been paid on account of dividend due some years prior and had been entered on the company's books as bonds.

Q. This next entry, ledger B, internal improvement fund?

A. It is ledger of the internal improvement fund, folio 184, January 1, 1861, which shows the par of the stock outstanding to be $385,600, and immediately below it we show the disposal of that stock. In showing the disposal of the stock, the original ledger entry had been lost sight of, as the stock was disposed of at 150.

Mr. Harrison: You mean all stock of the Richmond & Petersburg Railroad Company?

The Witness: Yes, sir; that is, the amount held by the State.

Mr. Harrison: That is the amount of stock owned by the State?

The Witness: Yes, sir, the amount of the stock held by the State was $385,600, which was disposed of at $150 per share, and made a return of $578,400.

Mr. Harrison: Settled by bonds of the State taken at $150?

The Witness: Yes, sir.

Q. To whom was that stock sold?

A. It was sold to the Richmond & Petersburg Railroad Company, and that railroad now forms part of the Atlantic Coast Line Railway.

Q. The railroad bought its own stock?

A. Yes, sir, paying for it as shown immediately below the entry.

By Mr. Holt:

Q. Mr. Hillman, in the exhibit under discussion as well as the exhibits heretofore filed, covering Classes A and B and E, and Class C, as far as we have gone through with it, they refer to various books and records, giving the volume and page, folio, etc. Where are those books kept?

A. The books of the Commonwealth Fund are kept by the First Auditor of the State of Virginia; the books of the Literary Fund, Sinking Fund and Department of Public Works or the Board of Public Works are kept by the Second Auditor.

Q. Second Auditor of what?

A. Of the State of Virginia. Some of the old journals of the Department of Public Works—

The Master: You say Board of Public Works or Department of Public Works?

The Witness: It is the Board.

The Master: Do not then confuse it. Keep to the Board all the time.

The Witness: The Board of Public Works, they are kept or are in custody of the State Corporation Commission, though they keep no books, but some of them are there on file and are held by them.

Q. The State Corporation of what, Jericho or Jerusalem?

A. State of Virginia.

Q. These various entries that appear here, Mr. Hillman, under the heading of C, showing the manner in which this $578,400 was paid—

Mr. Harrison: That was not an obligation; that was the value of the stock. It took $578,400 of bonds to pay off—

The Master: I understand that $578,400 was the amount that the State received for its stock at $150 a share.

The Witness: Yes, sir.

Mr. Anderson: That was paid in State bonds.

By the Master:

Q. Referring to the various entries that appear under this, showing the details of that payment, were those payments in cash or what were those payments in? What do the books show? For instance, here is page 351-2, journal, Internal Improvement Fund, $100; is that cash or State bonds or what?

A. They were paid in State bonds.

Q. How about all the other items; were they paid in State bonds or in cash?

A. All of them were paid in State bonds.

By Mr. Holt:

Q. That is, on this sheet?

A. On this sheet, yes, sir.

The Master: I mean on this schedule. The payments in State bonds aggregate $578,424.13?

The Witness: Yes, sir.

Q. Now, your item of $525.93, was that paid in State bonds or is that a computation of interest upon State bonds?

A. That is interest on bonds.

Q. Was that in cash?

A. No, sir; it was accrued interest on bonds that were turned over.

Q. Here are a number of payments; they were principal of bonds?

A. Yes, sir.

Q. And then the others were interest on bonds, that is, they took the bonds that were paid in and computed the in-

terest and then credited the parties making the payment with the principal and interest, is that right?

A. Yes, sir; it was accrued interest on the bonds which were turned in.

Q. So that if the bonds were paid in they were figured with the amount of the bonds with the accrued interest at the date of payment?

A. Yes, sir.

The Master: That covers that. The next item I think is 4, Virginia Central Railroad.

By Mr. Holt:

Q. Mr. Hillman, item No. 4, in Defendant's Exhibit No. 3, is Virginia Central Railroad stock. Have you examined the records of Virginia or the books of that railway company for the purpose of ascertaining the ownership of stock therein, and if any such stock was owned by Virginia, the extent of the holding on the 1st of January, 1861, or prior thereto?

A. Yes, sir, I have.

Q. What did you find her stock ownership to be on January 1, 1861, and prior thereto?

A. I only found the entry on the books of the company showing the aggregate amount which it had invested in the stock and which was on the books of the company $1,927,382.57.

Q. What did you say that aggregate was?

A. The amount paid for the stock of this company as shown upon the books, $1,927,382.57.

Q. You don't know how many shares that covered?

A. No, sir, I don't know exactly how many shares that covered. There is a statement which shows that at one time they owned—

By the Master:

Q. What is the statement, where do you find it?

A. It is found in a disposal of this stock later on, which we will come to when the Virginia Central is absorbed by another road, where they sold 26,433 and 39/100 shares.

Q. Who sold?

A. The State of Virginia sold to the Virginia Central; it sold it in 1888 and in 1890. The stock was disposed of on various dates and in quantities and prices seen below, as per journal O, Board of Public Works—

Mr. Harrison: What are you reading from?

The Witness: From a subsequent exhibit which I intend to file.

Q. Do you mean to say that there is not anything in any of these accounts of the State of Virginia which contains entries relating to the investment in the stock of this road, which tends to indicate the amount of that stock prior to some twenty-seven years after 1861?

A. No, sir. I have not been able to find anything on either side of the account; there was nothing that would show the par of the stock which they held. I know the amount of money which they had expended to acquire what they had.

Q. We know what the books show as to the purchase, but just exactly what that represents in par value you were not able to ascertain from the books?

A. No, sir.

Q. Where are the books of this Virginia Central Company, are they also destroyed or lost?

A. Yes, sir, there is no trace of them.

Q. And is there anything on the books of Virginia indicating any purchase of stock between January 1, 1861, and this date in 1888?

A. Yes, sir, they purchased; they made several payments.

Q. You introduce them later on?

A. Yes, sir.

Q. Does this entry from which you get your item of $1,927,382.57 consist of one entry or is it the aggregate of entries?

A. It is the aggregate of several entries.

Q. Covering what period of time?

A. It was prior to January 1, 1861.

Q. Yes, but it is the aggregate of several entries?

A. Yes, sir.

Q. Then my question is what period of time do those entries cover?

A. I have not got that data here with reference to that. I can get it for you in a very short time if you desire and answer your question in ten minutes.

Q. Is there not anything on those books that indicates the amount of stock that was purchased by those various payments?

A. No, sir.

Q. How does the entry read, if you can remember? Just give me the verbatim entry.

A. It is generally credit the Treasurer and debit the stock with payment on account of stock on such and such company, so much money; sometimes shares are mentioned, and then we are able to determine, and sometimes they are not.

Q. But in this particular road are the shares mentioned.

A. No, sir. I would not like to say that in no instance are they mentioned.

Mr. Anderson: I do not think there is any doubt in the world that certificates of stock were issued, and were held by the Board of Public Works for all this stock in this road. All this evidence that we have had today has not, so far as I can see, the remotest bearing upon the question of the value of these assets either on the 1st of January, 1861, or on the 20th of June, 1863.

The Master: That is a matter of course to be discussed later.

Mr. Anderson: It is such a waste of time. This Virginia Central Railroad stock was sold as low as two dollars, in the public market in New York, and sold by the thousand shares as low as two dollars.

Mr. Holt: When?

Mr. Anderson: Before this transaction we are talking about, along in 1880 and 1881, 1879 and 1880.

Mr. Holt: We are not interested in 1881.

The Master: Is it contended that the book values as disclosed by competent testimony, either from the books of Virginia or from the books of the railroad company, is not competent evidence bearing upon the question of the actual market value? Because that is the single question raised by the testimony.

Mr. Anderson: What Virginia got for the stock has nothing to do with its value, we claim.

The Master: That depends altogether upon the remoteness or otherwise of the evidence. Of course if Virginia had this stock on hand January 1, 1861, and succeeded in selling it on January 31, 1861, it would be difficult to say that the price that she obtained was not some evidence of value. That only shows that the period and time when the sale took place may of course affect the probative value of the evidence, and it may be so remote that in my judgment it won't have any value at all; but the question now before us is whether or not the book value as evidenced by the books of the Commonwealth or by the books of the railroad company or any legitimate source, whether that is or is not a competent factor bearing upon the question of value.

Mr. Holt: Our position is this, we are not asking this witness nor do his schedules show whether Virginia ever sold those stocks. In the case of the Virginia Central Railroad he sets out the book value as of January 1, 1861, as $131.16. Then we come in a moment to the underlying exhibit that shows the processes by which and the records from which he arrives at that book value, the contention being, as your Honor has already indicated, that a very strong evidence always of the value of a stock is its book value, because the courts have held from the earliest periods—

The Master: I do not think that the Virginia people seriously contest the fact that that may be a factor entering into the value. I will not say in advance what I am going to hold, but I may not hold that book value is actual market value. The only question here now is, if Virginia raises the question that the testimony is not competent, as to whether or not I shall admit the testimony as having a bearing upon the question as to what the market value is. Everything that you have put in up to date practically relates to the book value.

Mr. Holt: Except that in the case of some of these companies we have given you the dividends received semi-annually, which is another factor. The Supreme Court of the United States and all of our courts have repeatedly held that

those are the factors from which—you may not do it singly and alone, but from which in the aggregate the actual value is determined. There may be a difference between market value and actual value; it may have an actual value, but may have no market value, and we have to be governed by the circumstances of each particular case, and especially where there is no market value, the Supreme Court held that you must ascertain its actual value by a comparison of its assets and liabilities and the activities of the securities in arriving at the book value, which is the main factor for actual value.

The Master: The only question I wished to ascertain right now was whether the counsel for Virginia seriously contest the competency of the testimony as to the book value as a factor bearing upon what may ultimately be held to be the actual value.

Mr. Anderson: We cannot answer that, because we do not know what you propose to make of this evidence; but what my remarks related to was this, that what Virginia got ten or fifteen or twenty years after the formation of West Virginia has nothing on God's earth to do with the value of that property. We will prove that the stock was worthless at intermediate times.

Mr. Holt: There is not a word on that exhibit about what she got for this stock.

The Master: There is no contention about that. I understand perfectly General Anderson's proposition, and when we come to that question, that is a question which will be considered and passed upon; but the only question now is whether the testimony showing the book value is a competent factor to take into account in determining the actual value, whether it is a factor to be taken into account, one of the factors.

Mr. Anderson: I just want to call attention to the worthless testimony of the witness, as to its probative value I mean, as to the value of this stock twenty or thirty years ago; I am not talking about these exhibits, but his testimony.

Mr. Holt: We showed when loans were finally paid off; we had to show that to show a solvent debtor, in order to get at the value of the loan as an asset.

Mr. Anderson: Capital stock is not a loan.

Mr. Holt: It has some bearing upon it. To use the illustration of Brother Robinson, if I loan A five hundred dollars, whether or not it is worth anything at all depends upon the financial condition of Mr. A, but if we find that Mr. A comes up and settles in full principal and interest we can take it for granted that he was solvent at least and the loan worth something.

The Master: That of course is one way of answering the proposition.

Mr. Harrison: In response to your Honor's inquiry as to whether or not we were raising the objection as to the competency of the evidence, the proof as to the book value of this stock as having a bearing upon its actual value, so far as I am concerned, and I think I state the views of my associates, we will contend at the proper time that the so-called book value established here is no evidence whatsoever and does not aid at all in establishing the question of the actual value of these securities at that particular time; but we are not raising that question now and making an objection to it and asking your Honor to pass upon it, because, as I understand from your ruling this morning, you do not propose to throw any obstacle in the way of the introduction of anything that our friends on the other side or we either may choose to put in which we may think has a tendency to support our respective positions.

The Master: The ruling which I announced this morning is not quite as broad as that. I propose to make a liberal application of the rules of evidence, but when it comes to the question whether or not it is competent or otherwise, I am going to determine that; I am not going to turn that over to the counsel on either side.

I do not understand now that serious objection is made to this line of inquiry, and that being the case it is not necessary for me to rule. When a question arises and there is a reasonable doubt about the matter I shall probably give counsel on either side the benefit of the doubt, but I am not going to admit everything that counsel think they want to get into

the case, that is, I am not going to admit in advance that their judgment is going to guide mine; but within reasonable limits whatever either side wishes to put in I shall let in; if it is a reasonably debatable proposition I am going to give either party the benefit of the doubt, and if you get beyond what I think is a reasonable limit I shall shut you out.

Mr. Holt: I have one suggestion, and that is this, taking up one illustration, on the schedules that we introduced on the bank stocks we showed unquestionably, I think beyond controversy, in the case of all these banks that on the dates selected by us that they had a book value above par. We showed that during five years before and upon that year, and five years succeeding they were paying 8 per cent. dividends; we put in that evidence, and the market quotations might go in at the same time. Then we come to these railroad stocks, and put in evidence the actual demonstrable values from the records as of that date. Then when that evidence was all in we expected to discuss that question before your Honor as to the factors to be considered for the purpose of ascertaining the actual value of stock. We have already briefed the case, but we do not want to put the cart before the horse.

The Master: Precisely. There is no misunderstanding of course. I appreciate General Anderson's proposition too. You may proceed.

By Mr. Holt:

Q. I will ask you, Mr. Hillman, what you ascertained to be or to have been the book value of the Virginia Central Railroad Company's stock as of January 1, 1861, or the nearest date thereto ascertainable.

A. $131.16 per share.

Q. Is that set down on your Exhibit No. 3?

A. It is, yes, sir.

Q. Have you prepared a supporting or underlying exhibit showing the records upon which you relied and the calculations made by you therefrom in ascertaining this book value?

A. Yes, sir, I have.

Q. How have you marked it?

A. I have marked it in the upper right hand corner Hillman Exhibit No. 3, Asset No. 4.

Q. Will you file it as part of your deposition, marking it Defendant's Exhibit No. 3, Asset No. 4.

A. I will file it, marked as stated in the upper right hand corner, and also mark it Class C in the upper left hand corner.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset No. 4, August 18, 1914, C. B.

The Master: I understand the witness has testified that this is an accurate statement of his computation from the records.

The Witness: I have one explanation that I wish to make.

The Master: Certainly, make it.

The Witness: You will note on Exhibit No. 3, the original exhibit of which this is the supporting exhibit, that the par of the stock or the value of the stock which we have used, is $131.16, which is less than the face holding of the stock—

The Master: What you mean is that it is less than what appears by the books to have been paid for the stock?

The Witness: Yes, sir.

The Master: In the absence of any number of shares you cannot state any of the holdings; why do you make that change?

The Witness: For this reason, that the amount of stock upon which $131.16 per $100 was shown, when we found the value of this stock, showed only $1,891,670.60 paid by the State, and therefore we could not derive a value from a lesser amount of stock and then apply it to a larger amount of stock; that we had to take the stock paid in on that date when we determined the value of $131.16, paid in by the State on that date and apply that value to that lesser amount.

The Master: Let me see if I understand this. Do I understand that the books that you had access to showed paid in by the State on January 1, 1861, $1,891,670.68?

The Witness: No, sir.

The Master: What did they show?

The Witness: They showed that on September 30th, the date upon which we determined the value of this stock was $131.16.

The Master: Where did you find the entry of $1,927,382.57?

The Witness: That is the amount that the State had invested on January 1st, three months later.

The Master: Then the books showed this; on September 30, 1860, they showed an aggregate of $1,891,670.68, and the books also showed that between that date and January 1, 1861, enough in addition had thereto been paid in to make up the aggregate of $1,927,382.57, is that right?

The Witness: Yes, sir.

The Master: As I understand it now, you have in making your computation of the book value, predicated your $131.16 per $100. par value a share upon the amount that appeared to have been paid off September 30, 1860, instead of upon the amount that appears to have been paid off by the State, January 1, 1861?

The Witness: Yes, sir.

The Master: In other words, you have given to the State the benefit of the doubt, is that it?

The Witness: That is my intention.

The Master: Was there any other reason why you took the smaller instead of the larger sum?

The Witness: None at all.

The Master: And that explains the discrepancy between the two?

The Witness: Yes, sir.

Mr. Holt: Let me see if I understand it, your Honor. He finds that on the 30th day of September, 1860, which was a settlement period, that Virginia owned the lesser amount of stock.

The Master: He finds that she had paid that sum, the lesser sum.

Mr. Holt: But that then three months after she had paid more and owned more stock.

The Master: Precisely.

Mr. Holt: Now, he does not undertake to get the book value sharply as of January 1, 1861, but as of the nearest ascertainable date, namely, September 30, 1860; therefore he must take the lesser amount of stock on hand or paid for at that time, is that the idea?

The Master: That is the way I understand it.

The Witness: That is correct.

The Master: Of course counsel upon both sides understand that whenever I put an inquiry here the object is to clear up something that is not entirely clear in my own mind. I ought to say perhaps that since I made my report I have not examined either the report or anything in this case; I have not made any examination of any kind. I thought I would come here with my mind entirely open, and it is not only entirely open but pretty nearly vacant as to a great many of these details, so it is necessary for me to make some of these inquiries in order for me to get into touch with the details. I thought I would take the case as it developed and I would have it fresh in my mind.

Mr. Hogg: Your mind will not be vacant when you get through with this case.

The Master: I thought the better way for me would be to wait for the case to develop, and the result is that on many of the details I will need to refresh my mind when I come to write my report, so I may make some apparently unintelligent inquiries as I go along.

Mr. Holt: No. My experience has been that in your inquiries you not only help yourself but you are helping us too. We are not complaining at all.

Q. Mr. Hillman, you may tell us whether or not the exhibit just filed, No. 3, Asset No. 4, correctly sets forth and accurately and truly the calculations made by you upon this subject derived from the books and records examined by you?

A. Yes, sir, they do.

Adjourned to August 19th, 1914, at 10 A. M.

BEFORE THE MASTER.

Richmond, Va., August 19, 1914.

Present same counsel as on yesterday.

[NOTE.—Mr. Holt, of counsel for the State of West Virginia, moved the court for a continuance of the cause for a period of two weeks from this date, stating as his reason that the witness on the stand on the day previous, Mr. C. W. Hillman, had received a telegram that his wife was probably dying, and that he had gone to her bedside in Evanston, Ill.

In further support of his motion, Mr. Holt informed the court that Mr. Hillman was the chief accountant for West Virginia and had prepared all the schedules which would be offered in evidence and that he alone knew the facts set forth in the numerous items, and that as one of counsel for the defendant he felt that he and his associates could not proceed further in the absence of the witness.

After a full discussion of said motion, it was agreed by counsel representing both States, with the consent of the Master, that a continuance be had until September 2, 1914, at 10 A. M., providing, however, that the defendant file in evidence all schedules as of 1861, then prepared, the same to be treated as having been testified to as true by the witness, Mr. C. W. Hillman, but subject to cross-examination.

The facts as contained in this note were inadvertently omitted from the stenographer's record by counsel having charge of the editing of the same, and this interpolation is inserted to preserve its continuity.]

The Master: In the multitude and magnitude of this work, of course we can appreciate what Judge Holt says, that the schedules involve a prodigous amount of work. It is easy to see how with the multitude of work these schedules may not have been passed over as quickly in some instances as they might have been. I make the suggestion this morning that from now on when you get your schedules such as you are going to use, after they have had the approval of Judge Holt and of the other counsel for West Virginia, that you

hand them to the counsel for Virginia as early as may be before we get around to the hearing. All those things will facilitate progress. I do not know whether Virginia has any schedules or not, but if they do have—

Mr. Anderson: We have not.

The Master: Whatever you may have, as soon as they are completed hand them to West Virginia. I understand that the counsel for Virginia feel that their duty to their clients requires them to say they ought to have the whole case of West Virginia before they begin with the case of Virginia. Am I right about that?

Mr. Harrison: Yes, sir, substantially right.

The Master: I am going to say this, it is just as well to be frank with both sides, I am not going to compel West Virginia to proceed with this case, humanly speaking, unless it is absolutely necessary, in the absence of the testimony of the witness that they believe to be essential to the proper presentation of the facts from their viewpoint. Of course that involves Mr. Hillman, and for the reasons that they have already given, which seem to me at least very satisfactory. Now, the probabilities are that Mr. Hillman would be available for this case as early as the first of next week. Of course we cannot be absolutely certain of that, but I understand from the report made by Governor Hatfield that the great misfortune is liable to occur sometime today. That is the impression you got, Governor?

Governor Hatfield: That is the statement of the doctor.

Mr. Holt: I think we have solved it, your Honor, as far as we are concerned along the same line exactly. I just had a talk with Mr. Harrison. We are willing to do this, and we do not mean to say that things are always dependent upon our volition, we do not state it in that sense at all, but, we are willing to do this, to put in, in accordance with the suggestion made by these gentlemen this morning, the residue of the schedules covering Classes C and E, let them go into the hands of counsel for Virginia, into the record and into the hands of the Master. Then go right along and put in the schedules covering Class F, and then the final Class G;

in other words, all schedules in the case covering all classes relative to the year 1861, January 1st. Now, when we shall have done that, your Honor, we will have gone just as far as we presently can go. The accountants are working up the other material now, and as I understand the suggestion of Mr. Harrison, when we shall have accomplished that, they will not oppose the two weeks adjournment for the completion of the schedules.

The Master: That is the way I understand the suggestion; and in the meanwhile it will give you an opportunity, which I have no doubt you will be able to arrange among yourselves. Will you be able meanwhile, will you have anybody connected with your office who will be able to help some one that may represent Virginia to look to the original sources so as to verify so far as they can?

Mr. Hogg: They are all indicated on the schedules.

The Master: I do not know how that may be.

Mr. Hogg: Most of them are.

The Master: There may be something that is not covered on the schedules, and can you have some one who will be available to co-operate with some representative of Virginia so that when we get together at the end of two weeks—can it be understood, Judge, will it be feasible for your people to have some one representing you so far as the sources of information are not indicated on the schedules, to co-operate with some expert accountant representing the plaintiff, so that during this two weeks, they can get at the original sources and then be able to either co-operate or intelligently criticise when they get together at the end of the two weeks?

Mr. Holt: Here is our situation in that regard, we have three or four men here, I do not recall the number, and it is going to keep them exceedingly busy, even if they are free from interruption, to complete all the schedules covering June 20, 1863.

The Master: Yes.

Mr. Holt: Now of course, we have to appreciate the fact all the while, your Honor, that when we hand a schedule over to Virginia for the purpose of being checked up by her ac-

countant, that he might meet with some difficulty unless he had the man who made it to go over it with him; but in order to obviate that trouble you will find that every one of these schedules has on it the folio, the page, the volumes, just where the item comes from; and under the circumstances we thought it would not be necessary for one of our men to stay with Mr. Potter, their accountant, all the time; it would hardly be fair to take him away from the work on our side of the case to just go and turn pages for another man.

The Master: No, I do not see why it should be.

Mr. Holt: And when we have set down in this schedule the books, the office, the folio, the page where this thing appears, then he will be able to find it for himself. Of course if he should find any difficulty, mere ordinary courtesy would compel the other man to answer the questions. They will help as far as they can.

Mr. Harrison: Of course we do not mean for you to direct a man to work for Virginia entirely, but Mr. Potter has worked here before with your experts together whenever one wanted to know what the other was doing.

Mr. Holt: I really believe, Mr. Harrison, that we will find that our accountants when they begin to check up will get along pretty well together.

The Master: The understanding is then that in the verification of these schedules if Mr. Potter runs across anything that he is not able to ascertain from the schedules, he will have no embarrassment in calling on some one representing West Virginia to help him solve the difficulty.

Mr. Holt: We will ask Mr. Potter now whether even up to the present time he has not been working with these gentlemen and if they have not been answering his questions.

Mr. Potter: Yes, sir. There are certain calculations on these schedules that are not in the records of Virginia, and I will be compelled to ask the accountants on the other side for explanations of their calculations. So far as relates to the original books, I have most of them already.

The Master: Now, the understanding is that there will be no embarrassment so far as the accountants on either side

are concerned in having them confer with each other when there is anything that develops in the investigation as to which either accountants desire information; they will be quite at liberty to talk with the accountants on the other side.

Mr. Holt: We will go and give explicit directions to that effect to the accountants.

Mr. Anderson: I would like to ask our friends to furnish us with the schedules for June, 1863.

The Master: They have not got those prepared.

Mr. Holt: There is a mass of stuff there out of which the schedules for 1863 are now being evolved. This much is all completed, and when we return here on the eve of this adjournment, whatever the arrangement may be, the schedules covering January 1, 1861, will be completed; and then just as soon as the schedules for June 20, 1863, are completed they will go to you, at the same time they come to us, that is, after we have examined them, I should not say at the same time, but immediately thereafter. Of course I understand that the Master wants to open wide the door to the truth of the situation, and where these accountants can get together and agree, why it is all folly to have any delay or fuss about it.

The Master: Yes. Now, of course I do not know whether Judge Holt may be familiar with the situation that developed in the other case. I will refer to it as indicating the course which was then pursued and which facilitated progress very much. At the original hearing both sides came in with very elaborate and extensive schedules, and the first question that was raised was whether or not they agreed with each other, and it very promptly developed that there were minor items of disagreement involving anywhere from one to five hundred or one thousand dollars, and we heard testimony bearing upon those discrepancies for half a day or so, and finally I ordered the hearing suspended in order that the accountants on each side could get together with their two sets of schedules and harmonize them if possible and so far as they were able, to adjust differences, and the result was that when we got to the next hearing we had one set of schedules covering the whole case, and every schedule harmonized so far as the amount

was concerned, which saved a great amount of trouble. I do not mean to say that this same situation will develop here, but I am not going to sit here if it comes down to that and listen to controversies over small items in these various schedules without in the first place making an effort to compel these accountants on either side, assuming that this should develop to get together on those items. I cannot spend my time and the time of the counsel in struggling over small details of that sort, that is mere details that in all probability can be agreed upon; and my hope is that when we get through here, that so far as the computations are concerned and statistics and the figures, there will be an agreement upon all of them, so that all I will have to do is give to them the proper legal weight that they may be entitled to, and it is with that in view that this suggestion is made on the part of Virginia. Do you get my point Mr. Holt?

Mr. Holt: I get your point, and I think this matter will settle itself in the present case in this way, that the schedules for 1861 will be in the hands of Mr. Potter and his accountants and he will check them up, and our people will assist him in checking them, and the chances are that so far as figures are concerned upon which these calculations are based, that there will be no divergence of opinion.

The Master: I do not anticipate that there will be.

Mr. Lilly: I suggest, if your Honor please, that during the two weeks, they will prepare counter statements possibly, and we would like to have those as soon as we can get them.

The Master: The understanding is that any counter statements that are statistical in their character which involve an examination of the books of any kind are to be prepared and presented as early as prepared by Virginia. Now, do you want to go right along, or suspend until the afternoon?

Mr. Harrison: Let us go right along and finish it.

Recess until 2:30 P. M.

AFTER RECESS.

The Master: This printing, I suppose, is going on, and the understanding is that some responsible attorney for both

the plaintiff and the defendant supervise this manuscript and eliminate as they go on what they think can be properly eliminated from the record. My own notion is that most of the colloquies that take place, although they are not very extensive, may just as well be eliminated from the record, and so far as that is concerned what ever I may have said during the progress of the hearing, I see no reason why that should not go out of the record. Still, if you want it in it may stay in.

Mr. Holt: Wherever it is necessary to preserve the exact condition of the case it may go in.

The Master: It is not so important to have the colloquy printed in this hearing, because this testimony will be considered on rather broad grounds, and whatever is admitted will be considered if it is competent, no matter what the particular objection was or what assertion may have been made by counsel when it was offered. So my own notion is that you do not need either the colloquies or any suggestions that I have made. Of course if you want them in you may have them in.

Mr. Hogg: Your idea is to have an attorney for each side, working together?

The Master: Yes. I think you ought to have a responsible man on each side who will take the responsibility of saying what ought to go out of the record, and what you do not both agree upon as being proper to go out of the record will be printed. Have some responsible attorney to represent each side, and let them cut out whatever they can agree on.

Mr. Pollard: Will some attorney from West Virginia stay here?

The Master: The stenographer will give you this afternoon everything up to date, and they will have an opportunity to look it over some time this afternoon or evening, and then you can attend to the printing afterwards. All these schedules as far as I can see will have to be printed, and that is going to involve quite a good deal of work, but the printer might just as well be putting it in type. When we get back here we shall have substantially the whole case up to date in print, so far as I can see—I don't see why not.

Mr. Pollard: Are you gentlemen prepared to designate some counsel for that purpose?

Mr. Holt: I suppose Mr. Gregory will be here all the time, and we will try and make some arrangement about it.

The Master: Now, Judge Holt, have you your material in order so that we may proceed?

Mr. Holt: We will do the best we can, your Honor. At the adjournment on yesterday we had reached item 4 on Defendant's Exhibit No. 3, Virginia Central Railroad Company stock, but had not as I recall offered the underlying or supporting exhibit showing the processes by which a book value of $131.26 was given to the stock of that company as of September 30, 1860. I now therefore offer that exhibit.

The Master: That is marked Defendant's Exhibit 3, Asset 4, Sheet 1?

Mr. Holt: I think that asset had only one sheet. This exhibit seems to have been marked by Mr. Hillman as Hillman Exhibit No. 3, Asset 4. We now desire to file it and mark it. Defendant's Exhibit No. 3, Asset 4. It is offered, exhibited and filed as marked, with the understanding, in the absence of Mr. Hillman, that he has testified and the record may so show that said exhibit correctly and truly shows the result of his examination, just as if he had testified to the items herein set down and thereon appearing.

The Master: That same statement and understanding will apply to all of the schedules that are offered this afternoon, so it won't be necessary to repeat it. That covers the whole ground.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 4, August 19, 1914, C. B.

Mr. Holt: We come now to item No. 4 on this Exhibit No. 3, loan by the Commonwealth of Virginia to the Virginia Central Railroad Company, and in support and explanation thereof—

The Master: Brother Holt, the accountant has handed me one that relates to the disposition of the stock. Which do you wish to offer?

Mr. Holt: We do not care to take up the question of the disposition of the stock at this time, your Honor. The exhibit that I have just filed shows the processes by which the accountant arrived at the book value of the stock.

The Master: Then I will lay that one on one side.

Mr. Holt: We come now to the loan by the Commonwealth of Virginia to the Virginia Central Railroad Company, amounting to $90,032.82, and file in support and explanation thereof an exhibit that we mark Defendant's Exhibit No. 3, Asset C-4 and D-4.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 4, August 19, 1914, C. B.

The Master: Now, have you one relating to the dividends?

Mr. Holt: This exhibit also covers and explains the item dividend bonds embraced under No. 4 on main Exhibit No. 3. You will find towards the bottom of the page that dividend bonds are there set forth in detail.

The Master: After the letter C?

Mr. Holt: After the letter C. These dividend bonds amount to $143,508.

Next is Item No. 5, on Exhibit No. 3, Blue Ridge Railroad, built by the State, $1,604,723.23, with a value as shown on the main Exhibt No. 3, as of January 1, 1861, of $625,348.80; and we file in support thereof Defendant's Exhibit No. 3, Asset C. No. 5.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 5, August 19, 1914, C. B.

Mr. Lilly: There is an error in the caption.

Mr. Holt: We observe that in the caption of this exhibit the Blue Ridge Railroad is described as having been built by the State of West Virginia, and it should read built by the State of Virginia.

The Master: Strike out "West."

Mr. Holt: The sixth item on the main exhibit, Defendant's

Exhibit No. 3, is Alexandria, Loudoun & Hampshire Railroad stock, $993,248., with a value indicated thereon as of January 1, 1861, of $49,662.05; and in support thereof we file the supporting or underlying exhibit marked on the right hand corner Hillman Exhibit No. 3, Asset C-6, and mark the same as Defendant's Exhibit No. 3, Asset C-6. Now it may eventuate, your Honor, that some of these letters may mix the thing up somewhat; I stated that yesterday; but if we can make it plain we will get at the truth somehow.

The Master: We will have these printed up to date, and when we come to look the print over if there is any inconsistency or confusion we will straighten it up and have the print correspond.

Mr. Holt: That is the idea exactly.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 6, August 19, 1914, C. B.

Mr. Holt: The seventh item on the main exhibit of the defendant, No. 3, is Winchester & Potomac Railroad loan, $83,333.33, with an indicated value thereon as of the date of January 1, 1861, of the same amount; and we file in support thereof an underlying or supporting exhibit marked in the top right hand corner, Hillman Exhibit No. 3, Asset C-7, Asset D-5; in the left hand corner at the top, Class C, Class D, and ask that the same be marked Defendant's Exhibit No. 3.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 7, August 19, 1914, C. B.

Mr. Holt: No. 8 on the main exhibit of the defendant No. 3, is Virginia & Tennessee Railroad loan, indicated theron as $1,000,000., and set down thereon as of a value on January 1, 1861, of $886,685.; and in support thereof we file Exhibit No. 3, Asset No. 8, Sheets 1 and 2.

The papers were admitted in evidence and marked Defendant's Exhibit No. 3, Asset 8, Sheets Nos. 1 and 2, respectively, August 19th, 1914, C. B.

Mr. Holt: The ninth item on the main exhibit No. 3, is Southside Railroad Company loan, indicated thereon at $800,000.; and in support thereof we file the underlying exhibit marked in the right hand corner at the top, Hillman Exhibit No. 3, Asset 8, and ask that the same be marked as Defendant's Exhibit No. 3, Asset 8.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 8, August 19th, 1914, C. B.

Mr. Holt: Coming now to No. 10, upon the main Defendant's Exhibit No. 3, we have Norfolk & Petersburg Railroad loan, indicated there as $300,000., and likewise indicated thereon as of the value of January 1, 1861, of $137,000.; and file in support thereof the underlying exhibit marked in the right hand corner, Hillman Exhibit No. 3, Asset C-10 and Asset D-9, and in the left hand corner, Class C and Class D, and mark the same Exhibit No. 3, Asset No. 10.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset No. 10, August 19, 1914, C. B.

Mr. Holt: No. 11 upon the main Exhibit No. 3, is Roanoke Navigation Company stock, indicated as $80,000., and likewise indicated thereon as of the value on January 1, 1861, of $3,832.; and we file the underlying exhibit in support thereof, marked in the upper right hand corner Exhibit Hillman No. 3, Asset C, No. 11, and mark the same as Defendant's Exhibit 3, Asset 11.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 11, August 19, 1914, C. B.

Mr. Holt: No. 12 upon the Defendant's main Exhibit No. 3 is Alexandria Canal Company stock, indicated thereon at $252,000., and as having a value on January 1, 1861, of $764.47; and we file in support thereof the underlying exhibit marked in the right hand corner, Hillman Exhibit No. 3, Asset

C-12, and ask that it be marked Defendant's Exhibit No. 3, Asset 12.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 12, August 19, 1914, C. B.

Mr. Holt: The name of the company, your Honor will keep us straight even if our letters should confuse us. There are so many letters and figures here, and although somewhat of a mathematician, I am confused.

The Master: It is likely to result in confusion unless great care is exercised.

Mr. Holt: No. 13, on the main Defendant's Exhibit No. 3, is Upper Appomattox Company stock, shown as $56,500, and with an indicated value thereon of $16,144.26 on January 1, 1861; and we file in support thereof the underlying exhibit marked in the right hand corner, Hillman Exhibit No. 3, Asset C-13, and in the left hand corner at the top, Class C, and ask that the same be marked Defendant's Exhibit No. 3, Asset 13.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 13, August 19, 1914, C. B.

Mr. Holt: No. 14 upon the Defendant's main Exhibit No. 3, is Dismal Swamp Canal Company stock, indicated thereon at $190,000., and as having a value on January 1, 1861, of $9,935.99; and we file in support thereof the underlying exhibit marked in the upper right hand corner, Hillman Exhibit 3, Asset C-14, and ask that it be marked Defendant's Exhibit 3, Asset 14.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 14, August 19, 1914, C. B.

Mr. Holt: No. 15 upon the Defendant's main exhibit No. 3 is loan to Washington College, indicated thereon at $2,000. and as having a value on January 1, 1861 of $2,000., and we file

in support thereof the underlying exhibit marked in the right hand corner, Hillman Exhibit 3, Asset C-15, Asset D-11 and ask that it be marked Defendant's Exhibit No. 3, Asset 15.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 15, August 19, 1914, C.

Mr. Holt: No. 16 upon the Defendant's main Exhibit No. 3 is Richmond Academy bonds, indicated thereon at $400.00, and as having a value on January 1, 1861, of $400.00; and we file in support thereof the underlying exhibit marked in the upper right hand corner Hillman Exhibit 3, Asset C-16, Asset D-12.

The paper was admitted in evidence, marked Defendant's Exhibit No. 3, Asset 16, August 19, 1914, C. B.

Mr. Holt: No. 17 upon the Defendant's main exhibit No. 3 is claim against United States government indicated thereon at $298,369.74, and as having a value on January 1, 1861 of $298,369.74; and we file in support thereof the underlying exhibit marked in the upper right hand corner, Hillman Exhibit No. 3, Asset C-17, and ask that the same be marked Defendant's Exhibit No. 3, Asset 17.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 17, August 19, 1914, C. B.

Mr. Holt: No. 18 upon the Defendant's main exhibit No. 3 is claim against Selden, Withers & Company, indicated thereon as having a value on January 1, 1861 of $152,023.04; and we file in support thereof the underlying exhibit marked in the upper right hand corner, Hillman Exhibit No. 3, Asset C-18, and ask that the same be marked Defendant's Exhibit No. 3, Asset 18.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 18, August 19, 1914, C. B.

Mr. Holt: No. 19 upon the Defendant's main exhibit No. 3 is Richmond, Fredericksburg & Potomac Railroad loan, indicated thereon at $149,984.00, and as having a value on January 1, 1861, of $149,984.; and we file in support thereof the underlying exhibit marked in the right hand corner, Hillman Exhibit No. 3, Asset C-19, and ask that the same be marked Defendant's Exhibit No. 3, Asset 19.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, Asset 19, August 19, 1914, C. B.

The Master: Have you anything in addition to these?

Mr. Holt: Yes, we have others. We come now to Class D, as indicated by the exhibits to the supplemental answer filed in this cause; and in support of that class file a schedule marked in the right hand corner, Hillman Exhibit 4, in the left hand corner at the top, Class D and ask that the same be filed as Defendant's Exhibit No. 4.

The paper was admitted in evidence and marked Defendant's Exhibit No. 4, August 19, 1914, C. B.

Mr. Holt: We will state in connection with this exhibit that the underlying or supporting exhibits heretofore filed in connection with Class C perform likewise the office of supporting exhibits to this class, and they are specified in detail as follows:

Class D.	*Class C.*	
Asset 1	Defendant's Exhibit 3, Asset 1	(2 sheet)
Asset 2	Defendant's Exhibit 3, Asset 2	(2 sheet)
Asset 3	.....	
Asset 4	Defendant's Exhibit 3, Asset 4	
Asset 5	Defendant's Exhibit 3, Asset 7	
Asset 6	Defendant's Exhibit 3, Asset 19	
Asset 7	Defendant's Exhibit 3, Asset 8	(2 sheet)
Asset 8	Defendant's Exhibit 3, Asset 9	

Asset 9	Defendant's Exhibit 3, Asset 10
Asset 10	.....
Asset 11	Defendant's Exhibit 3, Asset 15
Asset 12	Defendant's Exhibit 3, Asset 16
Asset 13	Defendant's Exhibit 3, Asset 17
Asset 14	.....
Asset 15	.....
Asset 16	.....
Asset 17	.....
Asset 18	.....
Asset 19	.....
Asset 20	Defendant's Exhibit 3, Asset 5

Mr. Holt: In addition to the supporting exhibits filed with Class C, we now file in support of Class D, an exhibit marked in the upper right hand corner, Hillman Exhibit 3, Assets D-14 to 19, and in the left hand corner marked Class C and Class D, and this we ask to have marked as Defendant's Exhibit No. 4, Assets 14 to 19.

The paper was admitted in evidence and marked Defendant's Exhibit No. 4, Assets 14 to 19, August 19, 1914, C. B.

Mr. Holt: In addition to the foregoing we will have to prepare and will present at the next meeting an exhibit in support of this main Defendant's Exhibit No. 4, underlying or supporting item No. 10, which is not yet completed.

The Master: It occurs to me to make this suggestion, that something has been said with reference to what the record in the prior hearing already contains relating to these matters now in controversy. As to what the fact may be in that regard I do not know. But of course it is competent for either side to call attention to whatever may be bound in that record, but I should want each side to be prepared when we come together again to give to the other side a reference to such pages of the original record as they may have occasion to refer to or rely upon, so that if Virginia has any reference she desires to make, you will have them, and so on, and the under-

standing will be that those will be the pages and the only pages to which my attention will be directed on final argument. Whatever may be in the record I shall want pointed out by page so that I won't have to look it up, and so that the other side will have notice in advance, if there is anything of that sort.

Mr. Holt: That will be done, your Honor, of course. In the briefs we will not only make a citation of authorities, but it is our purpose to spare no labor or expense in making printed comments on the citations, so that we may aid your Honor; but the suggestion that you now make brings me to a matter that I wanted to speak to this morning, but had no opportunity to do so. Of course the statement is persisted in by the gentlemen on the other side that we are bringing nothing new into the record. Of course we do not agree with them on that proposition. Our understanding of it is this, and that brings us right to the matter you mention, that while a great many of these assets may have been mentioned in the record as it formerly stood, the main point now is the value of those assets as of given dates. Our contention is that their values were never ascertained at all heretofore and that those values are not set down in those records. That is the supplemental work that we are trying to do now. In the argument before the court at Washington, every time that we would mention one of these assets our friend upon the other side would produce the record and say, well, here is the Richmond, Fredericksburg & Potomac embraced in the former hearing and embraced in the former report, and we were only threshing over for the second time straw from which the wheat had been theretofore winnowed.

Now, while the Richmond, Fredericksburg & Potomac was mentioned in the former hearing, the value of the stock as of January 1, 1861, in that company and its value as of June 20, 1863, was not determined, and those are the matters that we are now trying to inject into the record, in case your Honor did not hear theretofore, nor the court theretofore hear, of the Richmond, Fredericksburg & Potomac stock, but that the inquiry as it then stood did not call for its valuation, but that

the court has sent us back to you now with authority to supplement the record by ascertaining the value as of those dates.

The Master: Your point is that whatever may have been said about these various items in the previous hearing was for one purpose, and whatever is said about them now is for another purpose?

Mr. Holt: Yes.

The Master: And that they are entirely distinct and separate?

Mr. Holt: Yes, sir.

The Master: Whatever the fact may be, of course it is entirely open to you, the purpose that you are now undertaking to serve, there is no question about that. My only suggestion is that if there is anything in the old record that has any legitimate bearing upon this issue, of course if the old record was introduced for one purpose, and the fact that it was introduced has no relation whatever to the pending purpose, it is of no consequence whatever. Upon the other hand, if it has any legitimate bearing upon the present issue, that I believe is a matter for fair consideration.

Mr. Holt: And we should put our fingers, and so should they, upon that portion of the record that has that bearing.

The Master: I simply call attention to that now because I am not going to search the original record. If there is anything in the original record that in the opinion of counsel on either side has any tendency to elucidate this controversy now pending, I want counsel to call my attention and the attention of the other side, when we get together again, to the pages or the schedules, so that we will have in the record just exactly what either side relies upon. I am very glad to get the suggestion of Judge Holt as to the detailed analysis, and anything that either side is able to do in connection with an analysis of the testimony that is introduced here, upon legal principles, of course will be of very great assistance to me in reaching my ultimate conclusion. Anything that will save digging this record over and over again will be of very great assistance. Of course I expect that from either side, and while I did not before insist upon formal printed briefs

with citations of authorities as to the various propositions upon which the counsel relied, and I did not then have printed briefs going into detail—of course I did not have the questions then that I have now; but this time when we get around to the argument I want each side, and the bondholders as well, prepared to give me a full detailed brief as to both authorities and the analysis of the facts. Then I will have the full contention of either side.

Mr. Holt: Your Honor, in support of Class F as exhibited with and as a part of the supplemental answer in this cause we file and ask to be marked as Defendant's Exhibit No. 6, being Class F, the following schedule or statement, marked in the upper right hand corner, Hillman Exhibit No. 6.

The paper was admitted in evidence and marked Defendant's Exhibit No. 6, August 19th, 1914, C. B.

Mr. Holt: And as a supporting and underlying exhibit thereto we likewise file a schedule marked in the upper right hand corner, Hillman Exhibit 6-A, and ask that the same be marked as Defendant's Exhibit No. 6-A.

The paper was admitted in evidence and marked Defendant's Exhibit No. 6-A, August 19, 1914, C. B.

Mr. Holt: We come now, your Honor, to Class G, as exhibited with the supplemental answer, and in support thereof we file a paper marked in the upper right hand corner, Hillman Exhibit No. 7, Asset 1, and in the upper left hand corner, Class G, consisting of two sheets, and ask that the same be marked as Defendant's Exhibit No. 7, Sheets Nos. 1 and 2.

The papers were admitted in evidence and marked Defendant's Exhibit No. 7, Sheets 1 and 2, August 19, 1914, C. B.

Mr. Holt: We likewise file as a supporting exhibit thereto one marked in the upper right hand corner, Hillman Exhibit

No. 8, and in the upper left hand corner Class G, and ask that it be marked Defendant's Exhibit No. 7-A.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7-A, August 19, 1914, C. B.

Mr. Holt: We also file in support thereof another supporting exhibit, marked in the upper right hand corner, Hillman Exhibit No. 9, and in the upper left hand corner Class G, and ask that it be filed and marked as Defendant's Exhibit No. 7-B.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7-B, August 19, 1914, C. B.

Mr. Holt : Gentlemen, you have noticed what was offered here. We stopped, you will observe on Class G, Exhibit No. 7-B. Attached to the papers that were handed to you I suspect were a lot of our schedules concerning taxes and so on. Now, we want to get those papers back, because they are mere private memoranda, and if they should be used hereafter we will furnish them beforehand; but the purpose is not to use them now and perhaps not at all.

The Master: With that suggestion, does that conclude the exhibits?

Mr. Holt: Yes.

Adjourned on motion of defendant to which plaintiff did not object to September 2, 1914, at 10 A. M. because of the extreme illness of the wife of the witness, Hillman, the expert accountant of the defendant.

BEFORE THE MASTER.

Richmond, Va., September 2, 1914.

Met pursuant to the adjournment of August 19th. Present, the same counsel who appeared on the previous days.

The Master: While we are waiting for Judge Holt and Mr. Hillman, I want to find out whether either side has given any notice to the other side of any evidence that was taken in the former hearing that they expect to use and rely upon in connection with this hearing.

Mr. Hogg: If your Honor please, we are at work on that now, but we have not completed it yet on our side.

The Master: Then that will be attended to?

Mr. Hogg: That will be attended to in due time, your Honor.

Mr. Harrison: We have not attempted to do that because we are at liberty to rely on any evidence in the record.

The Master: For the convenience of the other side and myself I want to know what there is in the other hearing that either side may decide to rely on.

Mr. Harrison: That will be pointed out.

The Master: You ought to point out to the other side and they ought to point out to you what is relied on.

Mr. Hogg: We are arranging that, and we will call their attention to it later.

The Master: Do not fail to have it done a sufficient time before the hearing closes so that either side may have an opportunity to put in anything further that they may desire to put in. The suggestion I made to Judge Holt last evening was that he put on Mr. Hillman and complete his direct-examination in relation to the schedules relating to January 1, 1861, and then if it was agreeable to the counsel for Virginia,

they could cross-examine as to all the schedules up to 1861, and then later on take up June 20, 1863, and take the direct and cross-examination as to that date, and that will get the testimony all together, if that is agreeable.

Mr. Harrison: I think, if your Honor please, it would be very much more satisfactory to have the witness in chief not only introduce whatever evidence they propose to put in through him relating to the date of January, 1861, but also to June, 1863.

The Master: Before you cross-examine at all?

Mr. Harrison: Yes, sir. It would be not only more logical, but would be in accordance with our own plan and arrangement to complete with both of those dates at the same time.

The Master: Well, whatever you think is the proper method, as far as you are concerned, is agreeable to me. Judge Holt, the counsel for Virginia think that the better way would be to have all the evidence in chief on the part of West Virginia, both as to 1861 and 1863, come in before their cross-examination as to either period. They have so arranged their case, and I should be inclined to allow them to follow their own ideas in connection with that. So that we will start right along this morning with Mr. Hillman, if it is agreeable to you, finishing up with your 1861 schedules, and then taking up your 1863 schedules, and going on with those, if that is agreeable to you, Judge.

Mr. Lilly: If the Master please, we do not want to be captious or over insistent on their going ahead with the cross-examination, but it occurs to me in view of the fact that they have had our schedules and evidence two weeks and have had full and ample time to go over them and check up on our schedules, that they would be in as good position now to cross-examine as at any other time; and ordinarily in investigations of this kind each paragraph is taken separately. I remember recently in an investigation in the Senate of the United States they had several paragraphs or sub-headings, and they completed one at a time; and your Honor on the previous reference finished a paragraph at a time. I think there were seven

specifications in the decree and you took them separately; and it occurs to me that it would tend to facilitate the case and tend to bring the direct issue to bear by cross-examining Mr. Hillman as soon as we get through with 1861. 1861 is separate from 1863, and there is going to be a serious contention, I take it, on both sides as to which will control and govern; and it occurs to me that the more distinct and separate you can keep those dates the more marked will be the contrast, and we will be better able to determine which date ought to prevail. They cannot be taken by surprise because they have had plenty of time to be up; and besides, we hardly are in shape to go ahead with 1863. We have been blue printing a good part of the night and having our stenographers at work, and I cannot see any real objection to that course and while it is true that the plaintiff may object, yet it is a matter in the discretion of your Honor, and they are separate and distinct dates and we feel that we ought to finish up 1861 as to the schedules, and as to the examinations. Another thing, Mr. Hillman's wife is yet in a very delicate condition and we do not know how long he can remain here, and it would be better if possible to get 1861 finished up while we are at it, especially as to the record evidence and cross-examination in relation thereto.

The Master: While that is in accordance with my own personal notion about it, I do not feel at liberty to require Virginia to pursue the examination in the method that does not appeal to them as being the one best calculated to produce advantageous results to them. I do not know what their special reasons may be, but assume that they are at least satisfactory to counsel.

Mr. Harrison: Absolutely.

The Master: And while I would rather prefer the method suggested by Mr. Lilly, I do not want to so much take the direction of the case as to deprive the counsel for Virginia of handling it along the line which they consider most advantageous to Virginia. If they agree to that I will be very glad to give the case that direction, but inasmuch as they feel that the better method for them is to have the whole case from

Mr. Hillman, both as to 1861 and 1863, before they cross-examine, I suppose I should not feel inclined to require them to go on contrary to their judgment. We will start right along with Mr. Hillman if that is agreeable.

Mr. Lilly: All right.

The Master: Of course it is understood all along that we maintain this chronological order so far as is feasible so that when we come to look our record up we won't have confusion and have to run the record all over for examination as to the various classes.

I will say for the benefit of the gentlemen who represent either side, in connection with the preparation of the record, that if they will take up the matter carefully and see that the record is scrutinized and excised so far as they can excise it, as soon as may be after the transcript is placed in their hands by the stenographers, Mr. Harris has an arrangement by virtue of which the printing will go right along concurrent with the hearings. The sooner he gets the transcript the sooner he will be able to print the record, and for that reason the gentlemen representing both Virginia and West Virginia should devote their time to it immediately upon receipt of the transcript from the stenographers. They will get the forenoon transcript sometime in the afternoon, and they will get the afternoon transcript early in the evening, and then they can have it all ready.

Mr. Anderson: I understand colloquies are to go out.

The Master: Yes. I suppose the stenographer is taking what we said now, but there is no use in having it printed.

CONWAY W. HILLMAN

recalled for further examination, testified as follows:

The Witness: Your Honor, I would like to ask the correction of a clerical error on my first exhibit.

The Master: What page?

The Witness: Second exhibit, page No. 2, of the exhibit.

Mr. Holt: We do not understand what is going on.

The Master: This is simply the correction of an error.

This is a very nice arrangement; I want to compliment the men on the manner in which they have gotten up the record. So far as I have seen it looks to me to be in very nice shape. These exhibits are all by themselves and separated by a red sheet, which makes it very handy. When we come to the exhibits of 1863 they will be put in in the same way, which will help us a great deal. The matter just now pending before the Master is the suggestion made by Mr. Hillman that he wants to correct an error in Defendant's Exhibit No. 2, found on page 2.

Mr. Holt: Is that Richmond, Fredericksburg & Potomac?

The Witness: Yes.

The Master: What is the correction you want to make?

The Witness: On page 2 of Defendant's Exhibit 2, on page 481 of said record I have marked March 31, 1859, that the outstanding stock was $1,033,600., and surplus was $352,-967.30, and book value was 144.2. The correct figures should be: Outstanding stock, $1,043,700.; the surplus should be $461,134.54; the book value remains as it is. That will be showr to be correct by pages 4 and 5 of the same record. It seems that after having determined the 144.2 from my record, my eye going back caught 1858, which was just ahead of that, and the figures for 1858 were inadvertently copied.

The Master: Unless there is some objection I am going to order the original record to be corrected in accordance with the suggestion of Mr. Hillman, and not have the colloquy appear in the record at all, so that when we get the final print the record will be accurate without the necessity of an explanation at all. Mr. Harris, you will see, please, that that change is made in accordance with the suggestion made by Mr. Hillman. Everything of this kind can be corrected without taking any space in the record, or causing any confusion; so that the original record will read, outstanding stock, $1,043,-700.; surplus, $461,134.54. And this colloquy will not appear in the record at all. Is that agreeable, Mr. Harrison?

Mr. Harrison: Yes, sir.

The Master: Is there any other change desired, Mr. Hillman?

Mr. Holt: There is one other thing, your Honor, it seems that some of the headings of the columns of exhibits for 1861 now printed should be changed. By way of illustration, a column will be headed book value when it plainly appears it should have been face value or par value. We have made the discovery in the preparation of the exhibits for 1863, and I think those corrections, when we have them noted, may be made without tearing down the type at all, but just simply changing the column.

Mr. Harrison: Are not the corrections which you suggest corrections of your own account? The witness has given the caption to the columns embraced in his own work, and you want to correct those captions. You want to correct your own account?

Mr. Holt: No, he should correct his account.

Mr. Harrison: In other words, if the accountant has called a thing "book value" and has made a caption accordingly, counsel want to correct it and call it something else; and I do not think that is proper.

Mr. Holt: We want to correct that through him; he is making the correction, not we.

The Master: There won't be the slightest difficulty about it. The direction I am trying to give to the hearing is to save all the time I can for both sides. Judge Holt, please make a memorandum in order to make your schedules in accordance with what you think the facts are, and submit that memorandum to the other side, and if they have no objection we will have the changes made. If they want to cross-examine as to why those changes are made, that is open to them. But meanwhile, you submit the memorandum, and if they agree to it that is the end of the controversy. If they think that impeaches the integrity of the account, that is another thing. On the other hand when they look them over, if they think that the changes are not material and are willing they should be made, we will have them made the same as this first change has been made. You submit your memorandum.

Mr. Holt: We will do that. I only wanted to bring it up now because your Honor inquired whether there were any other corrections.

The Master: Of course this does not preclude anybody from having the record changed to be in accordance with the facts, but if there are any others that you can think of now, you may correct them. Can you think of anything further, Mr. Hillman?

The Witness: Page 16 of the testimony, the eleventh line from the top, reads now, "It was necessary for me to *make* the receipts and disbursements," it should be, "*take* the receipts and disbursements."

The Master: Any objection to changing that?

Mr. Harrison: No, sir.

The Master: Mr. Harris, are you keeping track of these?

Mr. Harris: Yes, sir.

The Master: Of course leave out all this colloquy when you print the report. Do you think of anything more, Mr. Harrison?

Mr. Harrison: No.

The Master: Do you, Judge Holt?

Mr. Holt: No, not now.

The Master: Of course if any changes are to be made in this record as printed, why before they are made we will have attention called to them in open session, so that if any question is suggested upon either side it can be raised then. There is no reason why, as we go on, we should not have this record in complete, perfect shape. Of course you have just received your copy and have not had a chance to give it critical examination. Now, I think we are ready, Judge Holt. Mr. Harris, I suppose while this record is going on you can be gradually getting together your final index of the witnesses and exhibits, and all that sort of thing, so that when you get your final print made your index will be practically completed.

Mr. Harris: Yes, sir; all this matter is standing for correction, and we will keep the index up-to-date.

By Mr. Holt:

Q. Mr. Hillman, if you have the printed volume of the evidence before you, so far as it has gone, please turn to page 46 of the exhibits, under the heading Defendant's Exhibit No.

4, and to item 10, James River & Kanawha Co., $250, and state whether or not you have prepared from the records of the State of Virginia an underlying or supporting exhibit in explanation and confirmation of that item?

A. Yes, sir, I have.

Q. Will you file that schedule or supporting exhibit as a part of your deposition, and mark it Defendant's Exhibit No. 4, Asset D 10.

A. Yes, sir, I now file it so marked in the upper right hand corner, and in the upper left hand corner marked Class D.

Q. This exhibit seems to be marked State of Virginia, or entitled rather, State of Virginia, Kanawha Board of the James River and Kanawha Company. Please explain that schedule to the Master.

A. Treasurer's blotter, January 4, 1861, which is not paged, shows the receipt of an interest item of $250 from the Kanawha Board of the James River & Kanawha Company, and that this is a partial payment of the interest on a loan of $100,000., to the above company made by the State of Virginia, and which interest was due on January 1, 1861.

Q. You may state whether or not that schedule truly gives the figures therein set down as ascertained by you from the records of Virginia therein referred to?

A. Yes, sir, it does.

By the Master:

Q. That shows that $250 went into the treasury of the State of Virginia?

A. Yes, sir.

Q. Does that $250 item enter into any other aggregate that appears in any of your computations as a part of the fund on hand in the treasury of Virginia?

A. No, sir, it does not. It does not enter into any subsequent computations of interest or payments of principal.

Q. It does not enter into any computation that you have made showing funds in the hands of the State of Virginia on January 1, 1861?

A. No, sir.

Q. So it is not duplicated?

Mr. Holt: As I understand the object of the Master it is to ascertain whether that $250 constituted any part of the cash set down in Schedule A as of January 1, 1861.

The Master: That is it exactly.

Mr. Harrison: That was not the Master's question.

The Master: That was what I wanted. Of course I have not examined these schedules that I assume you have here somewhere—schedules showing cash on hand at some date. What I wanted to find out was whether or not this $250 was a part of an aggregate.

The Witness: It was not.

Mr. Harrison: What was not? What was the question?

The Master: It is not part of the aggregate contained in any schedule showing cash on hand in the State of Virginia on January 1, 1861. That is what I understand.

The Witness: Yes, sir.

Mr. Holt: Mr. Harrison, the very first exhibit, Defendant's Exhibit No. 1, undertakes to show the total of cash on hand December 31, 1860, or January 1, 1861, and the funds among which it has been apportioned. The question was whether this $250 was embraced in that.

The Master: Yes.

Mr. Harrison: I understand that; but the Master's question in the beginning was broader and the answer was broader, and he said it did not enter into any computation.

The Master: My question was broader, but it was directed mainly of course to that state of facts. What I simply wanted to know was whether that item of $250 was an item to be added to any previous fund or whether it was included in some other sum, and I understand it is not included in any other sum which is shown in your schedule; is that right?

The Witness: You are correct.

The Master: Some of these questions I put may be unintelligible, but I am simply making these inquiries as they occur to me.

Mr. Holt: I think, if you will pardon me, that I caught it right off the reel—what you intended. It was plain to me.

By Mr. Holt:

Q. Have you the copy of the printed supplemental answer before you?

A. Yes, sir, I have.

Q. Please turn to page 60 thereof.

A. Yes, I have it.

The Master: What is this, Judge Holt?

Mr. Holt: I am referring to the printed answer.

Q. I see a statement therein, at the page referred to, as follows: "In addition to the foregoing, the State of Virginia, after the division of the old Commonwealth into two states, June 20, 1863, collected large amounts of money from several counties then and now located in the State of West Virginia, and aggregating the sum of $225,078.06.;" and I will ask you whether or not you have examined the books and records of the Commonwealth of Virginia for the purpose of ascertaining the truth or falsity of that statement.

The Master: This item, Judge Holt, as I understand it, is not included in either one of the seven classes.

Mr. Holt: That is the reason I am taking this pains to describe it.

A. Yes, sir, I have made such an examination.

Q. What did you find the total of taxes thus collected, if you found that any had been so collected?

A. For the taxes and the redemption of lands which had been sold for taxes. I found the sum of $224,799.63 had been collected from the West Virginia counties from June 20, 1863, up to April 1, 1865.

Q. Have you prepared an exhibit setting forth in detail this examination and the result thereof?

A. Yes, sir, I have.

Q. Will you please file the same as a part of your deposition and mark it Defendant's Exhibit No. 10?

A. Yes, sir, I now file the paper marked Defendant's Exhibit No. 10.

The paper was admitted in evidence and marked Defendant's Exhibit No. 10, September 2, 1914, C. B.

Q. Turning now to that exhibit, I find, Mr. Hillman, the first item thereon, general taxes assessed after January 1, 1861, and, under the heading, period June 20, 1863, to April 1, 1865, the sum of $189,643.31. Please explain that item.

A. That is the amount which the West Virginia counties paid into the treasury of Virginia on account of general taxes assessed after January 1, 1861. This amount was taken off in detail from the books of the Commonwealth of Virginia, First Auditor's office, wherein the receipts of taxes are set out in detail. These are on my working papers, showing the pages and the amounts on each page, and are susceptible of check if so desired. They were too voluminous to put into an exhibit to present to the Court.

Q. During what period were the taxes embraced in this item paid?

A. Between the period June 20, 1863, and April 1, 1865.

By the Master:

Q. Does that mean that there were no taxes paid on account of those prior to June 20, 1863?

A. No, sir, it does not; it means that there were paid subsequent to that date, June 20, 1863, and up to April 1, 1865, the amounts which I have stated.

Q. Then that simply means this, that after the organization of the State of West Virginia, the people living in the counties, what was after that time the State of West Virginia, paid this amount of taxes?

Mr. Harrison: In some of the counties.

Q. In some of the counties?

A. Yes, sir, that is what it means; and I have the details.

By Mr. Holt:

Q. You may now explain the second item on Exhibit 10.

A. Those are the law processes assessed, or the amounts collected by the County Clerks of amounts assessed after January 1, 1861, and collected during the period mentioned, June 20, 1863, to April 1, 1865.

By the Master:

Q. What do you mean by law processes assessed?

A. They have certain fines and certain charges against litigants in courts, which are collected not through the regular tax department but through the County Clerks, instead of through the Sheriff. They are listed separately from the regular taxes collected at that time by the Sheriffs of the counties, and therefore they appear separately from the general taxes such as the per capita tax and the regular taxes upon land and property.

Q. Well, they are not really assessed at all, but they are simply the costs of legal proceedings during that period?

A. During the period prior to January 1, 1863.

Q. It is not assessed by any public body constituted for the purpose of making assessments, but simply the costs of legal proceedings which are collected by these various county officers?

A. Yes, sir.

Mr. Holt: If I understand it, and I do so understand, subject to correction by the gentlemen who practiced under those laws, this was simply a tax on legal processes.

The Master: I understand it now.

The Witness: They are court costs rather than tax assessments.

By Mr. Holt:

Q. Mr. Hillman, you may take the third item upon that Exhibit 10.

The Master: That is of the same character I take it?

The Witness: Yes, sir, it is of the same character, law process assessed—

The Master: Became due, or a tax, you may put it that way, costs taxed against litigants prior to January 1, 1861, that is what that is?

The Witness: Yes, sir, prior to January 1, 1861, and collected during the period June 20, 1863 to April 1, 1865.

Q. What was the amount of that third item?

A. $1,158.13.

Q. Now the fourth item?

Mr. Anderson: It is understood we are not now interposing objections. They are attempting to charge loyal Virginia with the acts of the Richmond government.

The Master: The materiality of this of course is open to both sides.

Mr. Holt: That will have to be taken care of when we come to it.

Q. (Question repeated).

A. The fourth item consists of the general taxes assessed prior to January 1, 1861, and collected during the period from June 20, 1863, to April 1, 1865, from the West Virginia counties, and amounts to $22,715.93.

By The Master:

Q. What is it that differentiates that from your first item?

A. One was taxes which were assessed subsequent to January 1, 1861,—

Q. One is after and the other is prior?

A. Yes.

By Mr. Holt:

Q. Explain the fifth item, license taxes of May, 1861, and give the amount thereof as shown by the exhibit.

A. License taxes were assessed and collected twice a year. For convenience in auditing I have separated license taxes of May, 1861, from the other general taxes, and therefore simply noted that license tax of 1861 instead of consolidating it with the other general taxes which had accrued after January 1, 1861, making simply a separate item.

By The Master:

Q. What were these licenses on, occupations?

A. On occupations, dogs, horses, guns, vehicles, for bars and peddlers' licenses and all other items. It is merely for convenience that it was placed there in that way. That amounts to $1,231.33 paid in the period June 20, 1863, to April 1, 1865.

By Mr. Holt:

Q. Explain the sixth item of Exhibit 10, lands redeemed.

A. Lands had frequently been sold for taxes. They were allowed to be redeemed, and this represents the amount, $552.49, which was collected from these counties on account of the redemption of lands in the West Virginia counties which had been sold for taxes. It amounted to $552.49. The items were on account of lands redeemed prior to January 1, 1861, which had been sold for taxes which accrued prior to January 1, 1861.

By The Master:

Q. When did the redemption take place, after January 1, 1861?

A. The redemption took place in the period June 20, 1863, to April 1, 1865.

Q. But you say the sales had been made prior to January 1, 1861?

A. Yes, sir, or had been sold for taxes which accrued prior to that date.

Q. Predicated upon taxes assessed before January 1, 1861?

A. Your Honor, I would like to say right here that where the date was not mentioned, and quite frequently it was not mentioned—

Q. You mean the date of the sale or the date of the assessment?

A. The date of the tax.

Q. The date of the assessment?

A. The date of the assessment, and the tax for which the land was sold, where that was not definitely mentioned I omitted it because it was not so distinctly stated, and therefore I could not locate it as being prior to 1861.

Q. That is, where you found an item of lands redeemed from tax sales, where the records did not disclose the date of the assessment of the tax, you did not include that in your item, did you?

A. I did not, no, sir.

By Mr. Holt:

Q. The next item appears to be delinquent taxes. Explain it, please.

A. In this item are the delinquents, where the taxes had run into the delinquent column and were afterwards collected frequently with some costs added to them. I have included in this case not only the amount of the tax but the amount of the assessment for delinquencies.

By The Master:

Q. What do you mean by that, assessments for delinquencies? Do you mean by that that you have included the tax, with the interest and cost of collection, or was there some separate independent assessment made upon delinquent tax payers which increased the amount due from them on account of the fact that they were delinquent?

A. Yes, there was an item in addition to the tax for delinquency, there were also included certain costs where they had to sue for them. In this case I have taken the entire amount of the taxes, of the penalty for being delinquent, and of the costs, and included the whole amount.

Q. You have the original tax, the amount of the penalty and the amount of the costs all included, is that right?

A. Yes, sir, for the reason, your Honor, that the records did not show exactly how much was tax, how much was penalty and how much was costs, but it was lumped in one sum. And the papers of course for that amount would be so inaccessible that I did not go into details on that.

Q. You were not able to find anything in the records that differentiated between the three items?

A. I was not.

Q. And you therefore gave the aggregate item, assuming that in some cases at least the three items were included is that right?

A. That is right, yes, sir.

By Mr. Holt:

Q. Well, what was the amount of the delinquent taxes in that item?

A. $351.95.

Q. And when collected?

A. Collected during the period June 20, 1863, to April 1, 1865.

Q. Please explain now the last item upon that Exhibit 10.

A. This is an account of delinquent and forfeited lands, where the land had been seized and sold for delinquent taxes and afterwards had been redeemed. This again is taken for the total amount, and also only where I could locate the fact that it was prior to January 1, 1861.

By The Master:

Q. You mean "it" was prior, that the tax was assessed prior to January 1, 1861?

A. Yes, sir.

The Witness: The amount is $8,210.30, for the period June 20, 1863, to April 1, 1865.

By Mr. Holt:

Q. What is the sum total, now, of the moneys embraced in that exhibit?

A. $224,799.63.

Q. How does that sum compare with the amount alleged in the answer?

A. The amount alleged in the answer was $225,078.06, a difference of $278.43.

Q. That is that much less than the allegation of the answer?

A. Yes, sir. Perhaps it might be well to explain, your Honor, that I stopped at April 1, 1865, for the reason that there was a very decided break in the books of Virginia at that period, for from three to six months. And having done it thus far, it seemed to me to be a very good stopping place, and I stopped at that point and did not continue the investigation beyond April 1, 1865.

By The Master:

Q. What do you mean by break in the books, that there seemed to be minus entries after that date?

A. Yes, sir, for three months there are no entries.

Q. They were apparently doing something else at that time besides keeping books?

A. Yes, sir.

Mr. Harrison: The witness has stated that he has the detail figures upon which the totals in this exhibit that he has been testifying about are based, and that they can be checked up if desired. We would like to have him turn those detail papers over to Mr. Potter, in order that he may check them up.

The Master: There is no objection to that, I suppose?

Mr. Holt: The two accountants will get together, and Mr. Potter will be given an opportunity to check them.

The Master: Then Mr. Potter will call at his convenience upon Mr. Hillman or upon one of his assistants for these detail statements so as to make the verification. If you have it in separate shape you had better hand it to Mr. Potter. If you have only one copy, that is one thing, but if you have duplicate copies you may hand it to him.

The Witness: I have only one copy, but I see no reason why Mr. Potter should not have that copy to check it.

The Master: Well, hand it to him for the purpose of checking it up.

The Witness: Of course it is understood, your Honor, that he return the copy.

The Master: Oh, certainly, we won't have any trouble about anything of that kind.

By Mr. Holt:

Q. Have you prepared another exhibit or schedule, being a a summary of all your exhibits or schedules for January 1. 1861, from one to ten inclusive?

A. Yes, sir, I have.

Q. What caption have you given that summary?

A. State of West Virginia, summary of claims of West Virginia for consideration in settlement of debt, as set up in Hillman Exhibits January 1, 1861.

Q. Will you please file the same and mark it Defendant's Exhibit No. 11?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 11, September 2, 1914, C. B.

Mr. Holt: I suppose, your Honor, it is not worth while to go into that. These gentlemen and your Honor will see at a glance what it is; it is a summary of what we claim these exhibits show.

The Master: It is understood that these items, although they may not be specifically called to the attention of Mr. Hillman, are in the record with the support of his oath that they are correctly made, and that of course opens the whole question to cross-examination by the other side.

Mr. Holt: Yes, sir.

Q. I will ask you this question, however. Is this a correct summary of these exhibits?

A. Yes, sir, it is.

Mr. Holt: Will your Honor please turn to page 41 of the printed exhibits. We now offer in support of Defendant's Exhibit No. 3, Class D, Asset 13, and Class C, Asset 17, two certificates. The first is the certificate on the Assistant Secretary of the Treasury of the United States in accordance with an act of Congress, as we understand it, and under the seal of the department, relating to a settlement between Virginia and the government of the United States on account of the moneys owed by the latter to the former and set forth in the exhibits referred to.

The Master: Why can't you have the record show, if there is no objection on the part of Virginia, that the accounts of the United States government show the following facts for whatever they may be worth? You do not need to print this certificate and you do not need to print any formal matter in connection with it unless it is required by the other side. If there is no objection I see no reason why you may not put in an excerpt from the books of the United States.

Mr. Holt: The truth is that the exhibit—

The Master: It may be that you cannot accomplish what

you want by this suggestion; if not, proceed by your own method.

Mr. Holt: The truth is that Defendant's Exhibit No. 3, Assets 13 and 17, really set forth all the details that are embraced in these certificates of the Assistant Treasurer, but our only idea was to—

The Master: I would suggest this, submit them to the other side and let them examine them, and if this schedule is an accurate statement of this certificate, simply have an entry made in the record that the certificate is in accordance with the facts as disclosed by the books of the United States, instead of encumbering the record with the details, unless you prefer it the other way.

Mr. Holt: We do not prefer it. Allow me however to make the second offer before I hand it to them. The second certificate is likewise that of the Assistant Secretary of the Treasury of the United States, dated August 4, 1914.

The Master: Submit that to the other side and have them examine it during the recess and see if a short statement can be put in the record that will make it unnecessary to print the whole certificate. You get my point?

Mr. Harrison: Yes, sir.

The Master: If for any reason either of you wish the details printed, that may be done, but otherwise it may just as well be stated what the certificate shows unless one side or the other requires that the details be printed. There is no occasion for lumbering the record up with duplication of proof.

Mr. Anderson: There will be no contention as to the figures.

The Master: Everything of that sort may just as well be summarized and stated provided there will be no controversy about it.

Mr. Holt: This completes as now advised our schedules covering January 1, 1861; but before proceeding to the schedules for June 20, 1863, we desire to offer in evidence and in support of Defendant's Exhibit No. 7, sheets 1 and 2, James River & Kanawha Canal Company, and for other purposes,

a copy of an act of the General Assembly of the State of Virginia entitled "An act to amend the charter of the James River and Kanawha Company passed March 23, 1860—

Mr. Harrison: It is already in the record.

The Master: In the old record?

Mr. Harrison: Yes, sir.

The Master: Do you need the whole act for your purposes, Judge?

Mr. Holt: I rather suspect to.

Mr. Harrison: The whole act is already in the record.

Mr. Holt: Let me finish this statement, and then we will discuss your point.

The Master: If it is in the record the probability is, if it was relied upon by the other side, I shall have it reprinted in this record. That is one reason why I want these matters referred to. I do not know what turn this may take ultimately, but I do not want to leave the Supreme Court of the United States in a position where they have not only to look over this record but have to go to work and hunt up the other record in the old case. When we get to the end of this I will endeavor to present to them in one volume the whole thing. Everything that is already in the original record that is material here we will have reprinted in this record . Of course you can hardly expect the Supreme Court of the United States to look over both these records and read through them both. That strikes me to be very much the most convenient and handy way and does not involve very much, so that so far as this is concerned here, if it is printed on the suggestion of Judge Holt it would render unnecessary the reprinting of it from the original record. Do you get my point?

Mr. Harrison: Yes, sir.

The Master: Of course it is going to leave the case, that is if I am going to put the case before the Supreme Court predicated partly on this record and partly on the other record, it is going to be in rather clumsy shape. I think everything that is going to be called attention to should be in this record. If that involves reprinting something that is in the other record, I think a few dollars spent in reprinting would be counterbalanced by the convenience to everybody.

Mr. Holt: I desire to add, your Honor, that the copy of this Act offered will be found on pages 113 to 118 inclusive of a volume entitled, Acts of Assembly, 1859-60. These are Virginia Acts.

The Master: What is the rule here in Virginia with reference to private and public acts, public acts the court takes judicial notice of and private acts have to be proved, is that right?

Mr. Harrison: Yes.

The Master: In some states, I know, both private and public acts are made matters of judicial notice, and you do not have to prove them; but in this State that only applies to public acts.

Mr. Harrison: I think so.

The Master: If counsel on either side wants these things on the record they ought to go in.

Mr. Holt: We are going to go over all these acts again, and we are going to use as few of them as possible, because we have no disposition to encumber the record. But we do appreciate the suggestion of your Honor, the question of convenience.

The Master: I am not going to decide this case on two records, and I think the court would be rather bothered if I should put it up to them on two records. It is too much to ask the Supreme Court to look over two records, it seems to me. I would not want to do it if I were situated as they are; and I do not want to do it as I am situated here.

Mr. Harrison: We do not want to consider two records; but I want to emphasize the fact that we are permitted to rely upon anything in the old record.

The Master: Certainly.

Mr. Holt: The copy of the act referred to which I now hand the stenographer is simply an unattested, uncertified copy; but I suppose there will be no objection to it on that ground.

Mr. Harrison: We will take the printed copy as correct.

Mr. Holt: I supposed you would. And I may add that we construe it to be a legislative declaration on the part of Vir-

ginia as to the value of that date of the James River and Kanawha stock.

The Master: In other words an admission of the State of Virginia that at that time there was the value declared upon admitted by them.

Mr. Holt: Yes, sir. That is why it is offered in connection with the exhibit that I have mentioned.

The Master: I understand you.

Mr. Holt: Your Honor, would it be convenient for the gentlemen upon the other side, and for your Honor as well, to have us start in on 1863 after lunch?

The Master: Yes.

Mr. Holt: I want to get 1861 out of my head before I start with the other, if I can.

Chapter 21 of Acts of General Assembly 1859-60 was admitted in evidence and marked Defendant's Exhibit No. 12, September 2, 1914, C. B.

The Master: We will suspend here until two o'clock.

Recess until 2 P. M.

AFTER RECESS.

The Master: Judge Holt, as I understand it you begin this afternoon on your schedules relating to the values as of June 20, 1863.

Mr. Holt: Yes, sir.

The Master: Unless there is some special explanation that you desire from Mr. Hillman, is there any objection to these schedules going right in as the testimony of Mr. Hillman, and then simply call his attention to items that you may desire to have him explain? That is it would be shorter than to take them up one by one. Of course I do not control the method by which you put them in, but I simply suggest this as a method of saving time.

Mr. Holt: My idea is that after the first one or two, your Honor, in order to get the hang of the matter, we would put them in one at a time, but without inquiring of their details.

The Master: I assumed the other side would have no ob-

jection to the schedules going in as the testimony of Mr. Hillman.

Mr. Holt: It may be that we may catch something going along that needs correction.

The Master: I only suggest that as facilitating progress and saving time.

Mr. Holt: I will be very brief with them after the first one or two.

The Master: All right. At the conclusion of the introduction of these schedules, and the testimony in chief of Mr. Hillman, I understand that Virginia will be prepared to go on with the cross-examination.

Mr. Harrison: Yes, sir.

The Master: I am just in receipt of a telegram indicating that it is very desirable for Mr. Hillman to return as early as possible to Chicago, under the unfortunate and painful circumstances, and of course we want to do everything that we can to facilitate that result, subject of course to both sides having an opportunity to get from Mr. Hillman everything that they desire.

Mr. Harrison: At the close of the examination in chief of Mr. Hillman we will be ready to go on and cross-examine right away.

Continuation of the direct-examination of

CONWAY W. HILLMAN.

By Mr. Holt:

Q. Mr. Hillman, we come now to the schedules upon the subject of values as of June 20, 1863, and I will ask you whether or not you have examined the books of the State of Virginia for the purpose of ascertaining the amount of cash in the hands of the Treasurer of that State to the credit of its various funds of June 20, 1863.

A. Yes, sir, I have.

Q. Have you prepared an exhibit or schedule showing the detail of your examination?

A. Yes, sir, I have.

Q. Will you please file the same and mark it Defendant's Exhibit No. 1, 1863?

A. I have filed the exhibit marked as requested. This consists of two sheets.

The paper was admitted in evidence and marked Defendant's Exhibit No. 1, 1863, September 2, 1914, C. B.

Q. What did you find on that date to the credit of the Literary Fund?

A. $20,916.29, of which amount $8,600. was the Dawson or trust fund, leaving as the State funds $12,316.29.

Q. What to the credit of the Board of Public Works Fund?

A. $563,930.99.

Q. What to the credit of the Commonwealth Fund?

A. $1,739,773.11.

Q. What to the credit of the Sinking Fund?

A. $143,195.90.

Q. What was the total cash on hand in all the funds as of that date?

A. $2,459,216.29.

Q. You may state whether or not this exhibit truly sets down the figures as taken from the records of Virginia and the result of your examination derived therefrom.

A. Yes, sir, it does.

Q. Have you examined the records of the State of Virginia with a view of ascertaining the ownership by that State of stock in the Richmond, Fredericksburg & Potomac Railroad Company on the 20th day of June, 1863?

A. Yes, sir, I have.

Q. Have you prepared an exhibit showing the result of your examination?

A. Yes, sir.

Q. Will you please file it, marking it Defendant's Exhibit No. 2, 1863.

A. I file it, so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 2, 1863, September 2, 1914, C. B.

Q. Of how many sheets does that exhibit consist?

A. It consist of one sheet with three supporting sheets, wherein the trial balance—

By The Master:

Q. What are they called, sub-sheets?

A. Yes, sir.

Q. You will excuse me, but keep your nomenclature harmonious.

A. Yes.

Q. In your testimony follow right along with your exhibit, so that there won't be any confusion.

A. Yes, sir.

By Mr. Holt:

Q. As I understand the answer then, it consists of one sheet and three sub-sheets?

A. Yes, sir.

The Master: I suppose, Judge, and Mr. Hillman, that up to January 1, 1861, so far as they relate to the same items it is a duplicate of the preceding exhibits under January 1, 1861?

The Witness: Yes, sir.

The Master: That is, so far as the same items are peculiar to each exhibit it is a duplicate of the preceding exhibit?

The Witness: Yes, sir.

By Mr. Holt:

Q. How many shares of stock of that company did Virginia own on the 20th of June, 1863?

A. 2,752 shares, of $100 each, $275,200.

Q. What did you ascertain the book value of those shares to be as of that date, if you ascertained it at all?

A. I ascertained the book value to be $184.50 per share. I was compelled to take the value of the stock as shown by the books of the company for the year ending March 31, 1863, to March 31, 1864, as there existed no intermediate balance which would show this.

By The Master:

Q. How did you get the date, on a pro rata basis?

A. Yes, and on these two dates I ran the date on time pro rata up to June 20, 1863, as is shown in the notation on this exhibit.

By Mr. Holt:

Q. I notice now on this exhibit that you have a column which is headed value, June 20, 1863, per share $184.50. What value do you mean in that column?

A. I mean that that is the value of the stock as shown by the books of the Richmond, Fredericksburg & Potomac Railroad Company on that date.

Q. Do you mean by value, book value?

A. Yes, sir, book value per share.

Q. Should then not that column be changed to read book value?

A. Yes, sir, I would so mark it.

By The Master:

Q. And the next column the same?

A. Yes, sir.

Q. The third column the same?

A. Yes, sir.

The Master: That is, if you want to make it consistent.

Mr. Holt: Yes, let him do that also.

The Master: I suppose it is understood that all the values given by Mr. Hillman in these schedules are book values?

Mr. Holt: Except where there is a value based upon dividend declarations.

The Witness: Your Honor, that is noted in the immediate line just below here where book value is mentioned, but I should have repeated it above as you have suggested.

Q. Don't indicate any departure from your usual plan because the term book does not happen to be inserted prior to value, and we want to understand unless there is a mark specially to indicate to the contrary, the values that you give are book values that you found from the books; that is right, is it not?

A. Yes, sir.

The Master: That will save examinations as to details if there are any other items as to which that criticism may be applied.

By Mr. Holt:

Q. You may now state the total value of the stock held in that company by the State of Virginia on that date.

A. $507,744.

Q. Did you likewise examine the books of the Richmond, Fredericksburg & Potomac Railroad Company for the purpose of making up this exhibit?

A. Yes, sir.

Q. You may now tell us whether or not this Exhibit No. 2, 1863, with its sub-sheets 1, 2 and 3, correctly set forth the result of your examination of the records of Virginia and the books of the Richmond, Fredericksburg & Potomac Railroad Company.

A. Yes, sir, they do.

Q. Have you examined the records of the State of Virginia with a view of ascertaining the sale of securities by her after January 1, 1861, that were owned by her prior to that date, and embraced in Class C in the exhibit to the supplemental answer?

A. Yes, sir, I have.

Q. Does the exhibit prepared by you cover the 18 items embraced in Class C of the supplemental answer, and likewise an item No 19, being a dividend bond of the Richmond, Fredericksburg & Potomac Railroad Company?

A. Yes, sir, it does.

Q. You may state whether or not the exhibit so prepared correctly shows the result of your examination of the records of Virginia upon these 19 subjects.

A. Yes, sir, it does.

Q. Will you file that exhibit and mark it Defendant's Exhibit No. 3, 1863?

A. Yes, sir, I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, September 2, 1914, C. B.

Mr. Holt: I suggest, your Honor, that I may make some inquiry about the items here, but when I come to the supporting schedules, in order to save time we will just file them.

The Master: Yes.

Q. I see that the first item in the exhibit just filed is Orange & Alexandria Railroad Company stock, and you have the amount there $874,500., under the word "Par." Please explain that.

A. That means 8,745 shares of the Orange & Alexandria Railroad Company owned by the State of Virginia, $100 each.

Q. That then is the total par value?

A. Yes, sir.

Q. Of that stock as owned by her on that date?

A. Yes, sir.

Q. What was the book value of that stock on that date?

A. The book value was $134.25.

The Master: That is June 20, 1863, Mr. Hillman? That is the date you refer to, Judge Holt?

Mr. Holt: Yes.

The Witness: That is the date of September 30, 1863.

The Master: You should keep a little more careful watch. This date is September 30, 1863, and you have an adjusting computation by which you reach the result?

The Witness: It has not been adjusted.

The Master: The $134.25 is predicated on September 30, 1863?

The Witness: Yes, sir.

The Master: And you made no adjustment to bring it back to June 20, 1863?

The Witness: Upon that there has been none made.

Mr. Holt: I observed that yesterday, your Honor, and I supposed that June 20th to September was such a short time that I did not pay any attention to it.

The Master: That simply develops the fact, and just exactly what conclusion follows from it is a matter of argument.

The Witness: Under the circumstances my man had overlooked that little adjustment.

The Master: The only thing is to develop what the fact is, and the general question as to what it is worth will be taken up later. Of course strictly speaking the book value on a particular date must be predicated upon what is found on the books, but as long as we know what it is there will be no trouble.

By Mr. Holt:

Q. What did you find the book value of that total stock to be on June 20, 1863, if you ascertained it and put it upon this exhibit?

A. I did not ascertain it for June 20, 1863, it was ascertained for September 20, 1863.

Q. Then should not your column, next to the last, "Value, June 20, 1863," be changed to September 30, 1863?

A. For that item, yes, sir.

Q. What is the meaning of the item $874,500 relative to the Orange & Alexandria Railroad Company stock under a column designated "Disposed of for?"

A. That is the amount which was finally received by the State of Virginia for this stock.

Q. When did she sell it?

A. In 1872, the first payment being March 28, 1872, the next payment being October 17, 1872, and the final payment October 28, 1872.

Q. Are those facts shown upon any supporting exhibit, Mr. Hillman?

A. Yes, sir.

By The Master:

Q. What is this $874,500; is that the aggregate of the three items that you referred to?

A. No, sir; that is the aggregate of the par of the Orange & Alexandria stock.

Q. But the question was when was it sold, and you have given the dates of the sale and given three dates. My question is whether the amounts that appear to have been received on those dates make up this item of $874,500.

A. They make up the aggregate of $874,500, plus a loan which was settled at the same time of $212,844.

The Master: That all appeared in the previous examination; I remember now.

By Mr. Holt:

Q. Have you prepared a supporting exhibit to this stock, statement of the Orange & Alexandria Railroad Company, just discussed in the main exhibit?

A. Yes, sir, I have.

The Master: Haven't you already got one in that takes care of that under your 1861 date?

Mr. Holt: I have it here; I think there are some additions to it.

The Master: Very well.

Q. Will you file this supporting exhibit and mark it Defendant's Exhibit No. 1, 1863, Asset 1—it is Asset 1, is it not?

A. Yes, sir. I file it, so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 1, 1863, Asset 1, September 2, 1914, C. B.

Q. What books and records did you examine for the purpose of making up this supporting exhibit, Asset 1?

The Master: Where does that appear in this exhibit that I have?

Mr. Hogg: It is the first page after Defendant's Exhibit No. 3, containing the nineteen different railroads.

Mr. Holt: Right up in the right hand corner you will find page No. 8; it runs along consecutively.

The Master: And then the following schedule is a continuation of it, I understand.

A. I examined the records of the State of Virginia in the Congressional Library at Washington; these reports for the years being missing from the files in the Library of the State of Virginia in this building. That is the same report which we examined in making up our 1861 schedules, that is the report of the Board of Public Works of the State of Virginia.

document 15, pages 7 to 24, for 1862, and pages 25 to 39 for 1863.

Q. Of how many sheets does this supporting exhibit consist?

A. Of but one sheet.

Q. You may state whether this supporting exhibit, Asset 1, correctly represents the records that you have examined of Virginia.

A. Yes, sir, it does.

Q. The second item under Orange & Alexandria Railroad Company is a loan, $377,772.65. Have you prepared a supporting exhibit to what appears concerning this loan on the main exhibit No. 3?

A. Yes, sir, I have.

Q. What records did you examine in making up these supporting exhibits?

A. Ledger B, folio 241, Internal Improvement Fund, State of Virginia, showing the face value of this loan on June 20, 1863, following the details taken from pages 389 to 392 of Journal M, Public Works Department, or the Internal Improvement Ledger, State of Virginia, showing the final disposition of this loan and its eventual settlement up to November 1, 1868, and from that point on Journal N of the Internal Improvement Department, State of Virginia, pages 407 to 410, showing the final settlement of the loan.

Q. Was the loan paid in full?

A. Yes, sir, it was paid in full, and $1.02 over.

By The Master:

Q. It was paid by bonds, was it not?

A. Yes, sir, bonds and discounts.

By Mr. Holt:

Q. I see down on the main exhibit under the column headed, disposed of for, this item, $377,772.65. What does that mean?

A. That means that on June 23, 1863, there was a payment and settlement made, or the settlement was brought up to that date, on this Journal N, pages 389 to 392, being within

three days of June 20, 1863, and the actual value of the loan on that date was $377,772.65, as will be shown by reference to page 10.

Q. Of how many pages does the supporting exhibit consist?

A. Of three.

Q. What pages are they as you have them marked here consecutively?

A. Pages 9, 10 and 11.

Q. You may state whether or not that supporting exhibit, 9, 10 and 11, correctly represents and reports the records of the State of Virginia upon that subject?

A. Yes, sir, it does.

Q. We come now upon the main exhibit, Defendant's Exhibit No. 3, 1863, Richmond & Danville Railroad Company stock. I find an item of $1,188,598.50 in a column designated par. What is meant by that?

A. That is the cost of the stock to the State of Virginia.

By The Master:

Q. In that case you were not able to find the number of shares that were purchased; the only thing you did find was the amount of money paid for the stock, is that right?

A. Yes, sir.

The Master: That is the same item, isn't it, Judge?

Mr Holt: I think so.

Q. That accounts for the odd figures there?

A. Yes, sir.

By Mr. Holt:

Q. What is the meaning of the item 162.27 under the column designated book value?

A. It means that that was the book value of this stock on September 30, 1863, the nearest fiscal year date to June 20, 1863.

Q. What is the meaning of the item of $1,928,738.79 under value June 20, 1863?

A. It means that the par of the stock or the face value of the stock on the books of the State of Virginia was multiplied

by 162.27, the book value, and the result is a cash book value of $1,928,738.79.

Q. As of what dates, Mr. Hillman?

A. As of September 30, 1863.

The Master: I do not find that sum as the result of any computation on any of the supporting schedules. I simply want to get the identity here so when I come to look the matter up I wont have any confusion about it. Where do you find that on your supporting schedules, this $1,928,738.79, what supporting schedules do you find that result on?

The Witness: There is no supporting schedule to that It is simply the multiplication of the face value of $1,188,598.50 by 162.27.

The Master: So I do not have any occasion to look at a supporting schedule for any computation that results in the sum of $1,928,738.79?

The Witness: No, sir.

The Master: That is a computation that is made entirely independent of the schedule?

The Witness: Yes, sir.

The Master: Except as you get your data from the schedule you make it from?

The Witness: Yes, sir. The book value is determined from the sub-schedule. No computation is made.

The Master: Ordinarily you carried those details out in the schedule, and I did not know but what I had omitted or failed to find it in this instance. I get your point now.

By Mr. Holt:

Q. What is the meaning of the amount $1,085,636.57 set down under the column designated "disposed of for"?

A. That means that the stock of the Richmond & Danville Railroad Company was finally disposed of for the sum of $1,085,636.57.

Q. Do you mean the stock in that company owned by the State of Virginia was disposed of?

A. Yes, sir.

Q. When was the disposition made?

A. Commencing December 13, 1870, ending August 31, 1871 as far as negotiations were conducted between the R. & D.

Company and the State, and final payment made under a decision of the Court, which was made in 1877, April 13.

By The Master:

Q. Was that all settled for in bonds?

A. Yes, sir, it was all settled for in bonds with the accrued interest on those bonds.

By Mr. Holt:

Q. Have you prepared a supporting exhibit to this item of stock, Richmond & Danville Railroad Company?

A. Yes, sir, I have.

Q. Of how many sheets does it consist?

A. Of one sheet.

Q. What is the page of it as you have it here?

A. Page No. 12.

Q. In order to prepare this supporting exhibit, page No. 12, what records or books did you examine if any?

A. The report of the Board of Public Works of the State of Virginia, on file in the Congressional Library in Washington, D. C., Document No. 15, pages 127 to 144 for 1862, and pages 145 to 161 for 1863.

Q. Will you file that exhibit and mark it Defendant's Exhibit No. 3, 1863, Asset 2.

A. Yes, sir, I file it, so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset No. 2, September 2, 1914, C. B.

By Mr. Holt:

Q. Does it correctly exhibit the records and the result of your examination thereof which you have referred to?

A. Yes, sir, it does.

Q. Coming back now to the main exhibit, Defendant's Exhibit No. 3, 1863, I find under Richmond & Danville Railroad Company a loan of $544,861.46. What does that item mean, Mr. Hillman?

A. It means the value of the Richmond & Danville loan on June 20, 1863.

Q. How did you ascertain the value of that loan as of that date?

A. By taking the settlement made for that loan and tracing it up to June 20, 1863, and thus determining its value.

Q. Was the loan paid?

A. No, sir, it was never paid in full.

Q. How much was paid on it?

A. $438,900.

Q. When was that paid?

A. Paid in 1882 and 1884.

Q. Under the caption, disposed of for, I find the sum of $439,900. What does that mean?

A. It means that that amount in bonds and interest on those bonds, Virginia bonds, was received for this loan.

Q. Have you prepared a supporting exhibit on the matter of this loan to the Richmond & Danville Railroad Company?

A. Yes, sir, I have.

Q. How many sheets does it contain?

A. It contains one sheet.

Q. What is it paged?

A. Paged 14. I would like to call your Honor's attention to one thing on page 14, and that is I make the statement there, "Loan was finally disposed of as follows"—

Q. Mr. Hillman, wont you wait a moment until I get that exhibit in, and then you may make your comments on it.

A. All right, sir.

Q. What books did you examine in making up the supporting exhibit referred to?

A. Ledger B., Internal Improvement Fund, page 12; Senate document Journal 1881 and 1882; record book of the Sinking Fund, Second Auditor, State of Virginia, page 285. Journal N., Board of Public Works, State of Virginia, folio 631; Journal N., Board of Public Works, State of Virginia, folio 632; and the same book, folio 635.

Q. These are all records of the State of Virginia, are they?

A. Yes, sir.

Q. Now you may tell us whether this supporting exhibit is true or not?

A. Yes, sir, it is.

Q. Will you file it as a part of your deposition and mark it Defendant's exhibit No. 3, 1863—what are the assets?

A. Assets C-2 and Assets D-2.

Q. What do you say to that, will you file it?

A. Yes, sir, I so file it.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-2 and Asset D-2, September 2, 1914, C. B.

By Mr. Holt:

Q. Now you desired to make a statement in explanation to the Master concerning this supporting exhibit. What is it, Mr. Hillman?

A. That there is no record that I could find whereby this loan had been reduced to the final settlement figure of $438,900, but that as the settlement was made on that date we have made the statement on this exhibit that it had been reduced by the partial payment plan used above to this sum, which would correct my statement which I made a moment ago that the loan was not paid in full. I found no method of bringing it down to that figure, $438,900, but I presumed that it had been brought down by some computations somewhere extant to that figure, as the loan was finally settled in full and as the Richmond & Danville was a company which could afford to settle in full.

By The Master:

Q. So far as the books are concerned, it does not appear on the face of the books that it was paid in full, but the amount paid in settlement you assumed to have been the result of some computation that reached that amount?

A. Yes, sir.

Q. Before you leave that schedule, explain to me where you get your $515,194.79 which I find on here in red pencil marks and also $544,861.46, just explain to me how those are the results of any computation you made upon that subject. This is page No. 14 that I have, Hillman Exhibit, Asset C-2. On my exhibit here is a red pencil mark $515,194.79 under $580,126.36.

Mr. Harrison: Those figures are not on this exhibit which I have at all.

A. I discovered in the interval at noon there had been a mistake made in the computation of this interest. I had it corrected. I had time only to correct yours, the Judge's and mine, and I handed those corrections to the accountant for the other side and asked him to put it on their sheets. It seems he did not have time to do it.

Q. Make it a little more clear to me just exactly what it corrects. Give me the details. I want to know how you reach this result of $515,194.79. Put it in the record so that I know where you got your figures from and if there is an error, give me the amount of the error and give me the details of it so I can see myself what the result was and how the error occurred, because as it stands here I cannot understand it at all.

A. Your Honor, will you allow Mr. Leeds just to put a figure in on that now?

Q. Yes. I want you to state on the record how you got that result of $515,194.79. State it so that everybody can hear it.

Mr Holt: We supposed that their accountant could accommodate us by making the correction now.

The Master: I am not going to take a chance. Make the statement orally so that the reporter can get it, because what you tell me here I wont carry in my head. Make the explanation so that it goes in the record, so that everybody can understand it. There is not a thing on this exhibit that tells me where those figures come from.

Mr. Holt: He is going to undertake that, but they have engaged him now to do something else, which is what I am complaining of.

Mr. Harrison: I think I have a right to have him show me what his correction is. The thing is absolutely unintelligble to me what he is talking about.

Mr. Holt: That may be true, but he has explained that he had it corrected, and he asked your accountant to correct yours.

Mr. Potter: He made a mis-statement in that regard, because he did not show me the figures that he wanted changed.

Mr. Holt: That I know nothing about.

Mr. Harrison: I only ask him to give me the figures that he now relies upon.

Mr.Holt: There is no reason for being disturbed about it I presume.

Mr. Harrison: No, I do not think so.

The Master: Instead of 515 it should be 574.

Mr. Holt: If you will be kind enough to ask him for the explanation, your Honor, I think we will all get through.

The Master: This item that I have been inquiring about is not $515,194.79, but $575,194.79. Your assistant has put upon my sheet $23,749.84 to take the place of $28,681.41, and tells me that that sum added to $551,444.95 produces the result of $575,194.79; that is right, is it?

The Witness: Yes, sir.

The Master: Where do you get $544,861.46?

The Witness: That is the value of September 30, 1862, of this loan as shown on page 12 of Senate document and Journal for 1881 and 1882.

The Master: Is $544,861.46 to take the place of $544,198.32? You have on my exhibit in red pencil $544,861.46, and right under it is $544,198.32. Is the last item assumed to be stricken out?

The Witness: Yes, sir.

The Master: And $544,861.46 treated as in its place?

The Witness: Yes, sir.

The Master: And that you say is the result of a computation showing the amount due on that loan on June 20, 1863?

The Witness: Yes, sir.

The Master: I get it now.

The Witness: Did I understand your Honor wished me to explain how we arrived at June 20, 1861?

The Master: I would like to have you put into the record the computation which results in $544,861.46.

A. Yes, sir.

Q. If you have it right handy by just put it into the record so that we can see what it is.

A. Yes, sir. The value of this loan as shown upon Senate Document and Journal, page 12, 1881 and 1882, on September

30, 1862, was $551,444.95. The interest is calculated upon this sum from September 30, 1862, up to the end of June 19, 1861, at the rate of six per cent. per annum, which gives us 262 days of the 365 days which make up the calendar year. Therefore, taking it upon that basis, the amount of interest which would have accrued in that period, 262 days, would be $23,749.84, which we add to the principal which was due on September 30, 1863, and that gives us the $575,194.79. There was an annuity of $42,000 a year due upon this loan each year and paid by the company. Of that annuity 8 months and 20 days had elapsed up to June 20, 1863.

Q. Or 8 months and 20 days had accrued of the annuity?

A. Yes, sir.

Q. The time had elapsed but the annuity had accrued?

A. Yes, sir, that is correct.

Q. And for that reason you deduct that from the sum you have last mentioned?

A. Yes, sir, since that annuity was afterwards paid in cash, and that makes a deduction from that amount of $575,194.79 of $30,333.33, and leaves this loan as of a value of $544,861.46.

By Mr. Holt:

Q. As of what date?

A. As of June 20, 1863.

By The Master:

Q. My impression is that you have inadvertently stated a date as to which you have computed interest. I think you said you computed interest up to 1861 when you must have meant 1863; is not that so?

A. Yes, sir, that is true.

Mr. Holt: We will travel more rapidly your Honor, after we have passed this omnibus blue sheet we have now.

The Master: I will watch you and see if you do.

Mr. Holt: You can apply the spur.

By Mr. Holt:

Q. Mr. Hillman, on the main exhibit, Defendant's Exhibit

No. 3, 1863, the third item is Richmond & Petersburg Railroad Company stock. How much of the stock of that company as shown by that exhibit did the State of Virginia own at par in that company on June 20, 1863?

A. 3,856 shares, $100 each, $385,600.

Q. What was the book value of that stock as shown by the exhibit on June 20, 1863?

A. $141.24 per share at the nearest date, September 30, 1863.

Q. What was the total value of the stock as of September 30, 1863, according to the books?

A. $544,621.44.

Q. Explain the item on that same subject of $578,404.13. You find it, do you, in the column?

A. Yes, sir. That was the price which was finally obtained for the stock when it was sold in 1871.

Q. By whom?

A. By the State of Virginia to the Richmond & Petersburg Railroad Company. The item there where it says "with interest" refers to the fact that there was an over payment of $4.13 due to accrued interest on bonds which was never adjusted, which means that the stock was sold at $150 per share, paid in bonds, and that there was $4.13 left over, owing to accrued interest on the bonds which was not adjusted by cash or otherwise.

By The Master:

Q. That is there was an overpayment of that amount?

A. Yes, sir.

Q. Affecting the interest on the bonds?

A. Yes, sir.

By Mr. Holt:

Q. Have you prepared a supporting exhibit explaining and sustaining this matter of the stock of the Richmond & Petersburg Railroad Company?

A. Yes, sir, I have.

Q. What page is it?

A. Page No. 16.

Q. Is it page 15 or page 16?

A. Page 16.

Q. Page 15 and page 16 seem to relate to that matter of stock.

A. Yes, sir, page 15 relating to the book value and page 16 to the amount received.

Q. Then you have two supporting exhibits instead of one?

A. Yes, sir.

Q. Will you file the first supporting exhibit and mark it Defendant's Exhibit No. 3, 1863, Asset No. 3.

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset No. 3, September 2, 1914, C. B.

Q. Will you likewise file the second supporting exhibit referred to and mark it Defendant's Exhibit No. 3, Asset 3-C; Asset 3-D.

A. I have filed it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset 3-C; Asset 3-D, September 2, 1914, C. B.

Q. What books or records did you examine if any for the purpose of making up the supporting exhibit referred to, asset No. 3?

A. I examined the report of the Board of Public Works of Virginia, Document No. 15, Pages 103 to 208, years 1863 and 1864, on file in the Congressional Library in Washington, D. C.

Mr. Holt: My information further is this that the Governor of this State in 1865 undertook to remove the capitol to the City of Lynchburg from Richmond, and they got as far as Buckingham with these records. The water in the canal gave out, and they stopped their journey; and in the meantime the Federals came along and scooped the whole business, and these

records went to Washington, and have been there ever since.

The Witness: I understand that since this investigation has been in progress the officials have taken steps to have the records returned.

Q. You have stated that you examined certain records of the State of Virginia, deposited in Washington, from which you made up the exhibit referred to. You may now tell us whether you found those same records or not in the achives at the Capitol at Richmond?

A. No, sir, I did not find them there.

The Master: I suppose that is true in each instance, wherever he predicates his conclusions upon records found in Washington, there was an absence of the same records here in Virginia.

By Mr. Holt:

Q. How is that, Mr. Hillman?

A. That is right.

By The Master:

Q. And those there were simply used to supplement the absence of those that you could not find here?

A. Yes, sir.

By Mr. Holt:

Q. Is the supporting exhibit, Defendant's Exhibit No. 3, 1863, Asset 3, page 15, true?

A. Yes, sir.

Q. Is the supporting exhibit, Defendant's Exhibit No. 3, 1863, Asset 3-C, Asset 3-D, true?

A. Yes, sir, it is.

The Master: Is that page 16?

Mr. Holt: That is page 16.

The Witness: The small foot note there shows how that $4.13 originated.

Q. That you have already explained, have you not, orally?

A. Yes, sir.

Q. Coming now to item No. 4 on the main Exhibit No. 3, 1863, we have Virginia Central Railroad Company stock, $2,013,987.52. What does that represent?

A. That represents the par of the Virginia Central stock owned by the State, as far as it could be determined, we not being able to determine just how many shares were held. It is the amount which they expended in order to obtain whatever stock they owned in the Virginia Central.

Q. Did it own that stock on the 20th of June, 1863?

A. Yes, sir, it did.

Q. What is the meaning of the item $164.61?

A. That represents the book value of the Virginia Central stock on September 30, 1863, the nearest date to June 20, 1863, that was obtainable.

Q. What is the meaning of the item $3,315,224.86?

A. It means that the par or face value of the stock owned by Virginia in the Virginia Central Railroad Company, viz, $2,013,987.52, calculated at a book value of $164.61 per share of $100, amounts to $3,315,224.86.

Q. Then that is the total of the book value of the holdings of Virginia in the stock of that company on September 30, 1863?

A. Yes, sir.

Q. What is the meaning of the figure in the last column $241,858.50?

A. That means that the holdings of the State of Virginia in the Virginia Central Railroad Company were finally disposed of for the sum of $241,858.50.

Q. When was that disposition or sale made?

A. It was made in 1888 and in 1890.

By The Master:

Q. Was it cash or bonds?

A. It was made in cash.

Q. Do the books show to whom it was sold?

A. No, sir, they do not, and I did not examine back of that to show to whom it was sold. I simply took the fact of the sale on the face of the books and made no investigation of that.

Q. In some of these other cases the transactions seem to have been between the company and the State, but you have no recollection as to how it was in this case?

A. No, sir, my recollection is, however that they were sold through brokerage firms.

Q. Sold in the public market?

A. Yes, sir.

Q. Does it appear that the total holdings were sold for that sum?

A. Yes, sir.

Q. So that whatever they held in par value in 1863 on the date that you have now given was ultimately sold in the public market for the sum of $240,000?

A. Yes, sir, and I would state that in that sale they sold 26,433.39 shares.

Q. Does that tally with your original estimate of the par value that they held?

A. Yes, sir.

Q. It does?

A. Yes, sir.

Q. Look now, please, Mr. Hillman, at blue print marked page No. 17, and you will find—

Mr. Holt: We have not offered that yet, your Honor. We are coming to that now.

The Master: Very good. Excuse me.

By Mr. Holt:

Q. Mr. Hillman, have you prepared a supplemental exhibit supporting and explaining the Virginia Central Railroad Company's stock about which you have just testified?

A. Yes, sir, I have.

Q. Will you please file it, marking it Defendant's Exhibit No. 3, 1863, Asset No. 4.

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset 4, September 2, 1914, C. B.

Q. What books and records if any did you examine in making up this supporting exhibit?

A. The report of the Board of Public Works, State of Vir-

ginia, Document No. 15, pages 41 to 64 for 1862, and pages 65 to 85 for 1863, on file in the Congressional Library at Washington, D. C.

Q. You may state whether or not this supporting exhibit is true and correctly sets down the result of your examination?

A. Yes, sir, it does.

Mr. Holt: Now your Honor, we would be glad to have you ask any questions.

By The Master:

Q. How do you reconcile these two items? Under item 4 Defendant's Exhibit 3, Virginia Central Railroad Company's stock is stated as $2,013,987.52, and on this schedule you have just put in you have stated here that the par of the stock is $3,292,444.73. Just tell me how you reached that result?

A. This is the total amount of outstanding stock of the company, but it is necessary to divide into the profits in order to determine the book value.

Q. It is the total for the whole company?

A. Yes, sir.

Q. That of course explains it, although there does not need to be anything on the exhibit to indicate what that is.

Mr. Holt: Is it in the record now, your Honor.

The Witness: Perhaps I ought to add this, your Honor. We do not know nor have we any trace until the State of Virginia commenced to dispose of this company's stock as to how much par value they held, and in order to take the safe side of the matter I did not take and make this calculation on 26,433.39 shares, which were afterwards sold, but took it at the figure which appears on the books of the company.

Q. Instead of taking what the value was declared to be by the number of shares that they held as a basis of your computation, you took what it appears they actually paid for the stock?

A. Yes, sir.

Q. You predicated your conclusions on that?

A. Yes, sir.

The Master: That takes care of that. I understand that

now. Of course it is easy now to see how that conclusion was reached, but they did not put anything on the exhibit to indicate it.

By Mr. Holt:

Q. Have you prepared a second supporting exhibit concerning this Virginia Central stock?

A. Yes, sir, I have.

Q. That is page No. 18, is it?

A. Yes, sir.

Q. Will you file it as Defendant's Exhibit No. 3, 1863, Asset C-4?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-4, September 2, 1914, C. B.

Q. Does it truly represent the result of your examination?

A. Yes, sir, it does.

Q. Taking the item, loan to the Virginia Central Railroad Company, I find an item amounting to $210,000. What does that represent, Mr. Hillman?

A. That represents a loan made by the State of Virginia to the Virginia Central Railroad Company.

Q. Was that loan made prior or subsequent to January 1, 1861?

A. My recollection is that part of that loan was made prior to 1861, $90,000, and that the balance was made subsequent to January 1, 1861, $120,000.

Q. Well, what was the date of the last part of the loan?

A. On March 31, 1861, $90,000 in addition to the $90,000 prior to it, January 1, 1861. On June 30, 1861, $30,000.

Q. Making a sum total of what?

A. $210,000.

Q. Was that loan ever paid in full?

A. Yes, sir, it was paid in full with interest.

Q. Do you recall when it was paid?

A. July 1, 1870.

Q. Have you prepared an exhibit in support of and giving the history of this loan?

A. Yes, sir, I have.

Q. Will you file it, marking it Defendant's Exhibit No. 3, 1863, Asset C-4, Asset D-4?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-4, Asset D-4, September 2, 1914, C. B.

Q. It is page 19 of these exhibits, is it not?

A. Yes, sir.

Q. What books did you examine in making up this supporting exhibit?

A. Ledger B., Internal Improvement Fund, State of Virginia; Cash Book 10, Internal Improvemnt Fund, Second Auditor's office, State of Virginia; and a statement on file in the File Room of the Corporation Commission of the State of Virginia, dated July 1, 1870, which is on file in a filing box in that Corporation Commission's rooms, and which is confirmed by the report of the Second Auditor in the State Book of Virginia of 1871.

Q. Does that exhibit state the truth?

A. Yes, sir, it does.

By The Master:

Q. How was that loan paid, in bonds or cash?

A. That was paid in bonds.

By Mr. Holt:

Q. The next item under the Virginia Central Railroad Company is dividend bonds, face value $58,650, as shown on the main exhibit. What does that mean?

A. That means that the Virginia Central had issued in lieu of dividends a bond, and that the State of Virginia owned $58,650, face value, of these dividend bonds, and that they were afterwards paid off in full by the Virginia Central Railroad Company to the State of Virginia.

By The Master:

Q. How were they paid, in bonds or in cash?

A. They were paid in bonds, sir.

By Mr. Holt:

Q. You have the same amount set down in the second column on the main exhibit, under the heading value June 20, 1863. What do you mean by that?

A. I mean that these dividend bonds were of par value in 1863, $58,650.

Q. What is the meaning of the same item in the last column?

A. It means that they received this amount for those bonds when they were finally cashed in.

Q. Who received them?

A. The State of Virginia.

By The Master:

Q. On what date were they paid?

A. August 25, 1870. And I would say that in the meantime these bonds had carried interest, and the interest had been paid upon them, as is shown in the same exhibit that we have just filed.

Q. How does that interest appear to have been paid, in cash or was it accumulative and finally adjusted by an exchange of bonds?

A. It was sometimes paid in the interim in cash and sometimes in bonds, paying it along as it accrued.

Q. That practice does not seem to have been uniform so far as the payments were concerned?

A. No, sir.

Mr. Anderson: Does your Honor refer to the principal of those dividend obligations or the interest on them?

The Master: The interest on them. A part of the interest on these bonds was paid in cash as it accrued, and such as was not paid in cash, as I understand it, was taken account of and paid in bonds.

Q. Am I right about that?

A. Yes, sir. Your Honor will note that this last payment

which appears on page 19, the exhibit we have just filed, happened to be a cash payment and was paid in money.

Q. That is the item of $2,390.99?

A. Yes, sir.

By Mr. Holt:

Q. Mr. Hillman, is this item of dividend bonds explained in detail in any of your supporting exhibits?

A. Yes, sir.

Q. Which one is that?

A. Page 19.

Q. And that is Defendant's Exhibit No. 3, 1863, Asset C-4, Asset D-4, is it?

A. Yes, sir.

Mr. Holt: The point there was that we did not have a separate underlying exhibit for that item.

The Master: Yes.

Q. We come now to the fifth item on the main Exhibit 3, 1863, Blue Ridge Railroad Company, built by State of Virginia. Please explain the item, $1,674,723.23 thereon appearing.

A. That is the total cost to the State of Virginia for the construction of the Blue Ridge Railroad.

Q. What is the meaning of the same item in the first column on the main exhibit under the heading, value June 20, 1863?

A. It means that the value of the Blue Ridge Road in 1863 was taken as its cost to the State of Virginia.

By The Master:

Q. When was it constructed?

Mr. Holt: I think the underlying exhibit would show that, may be.

Mr. Anderson: It was all constructed prior to 1861.

Mr. Holt: Yes, I think so.

Q. Yes, but how long prior to 1861?

A. I can tell you in just a moment, your Honor.

Q. When was the road constructed?

A. It was constructed almost entirely prior to January 1, 1861.

Q. Oh yes, but when prior? That does not give me any information; that amounts to nothing. Was it one year or ten years? When did they begin the construction and when did they complete it? Simply to say prior to January, 1861, is no use to me.

A. I will give you that date in just a moment, your Honor.

Q. Of course what you have done is you have carried along as the value of this road on June 20, 1863, what it cost as an aggregate at some prior time. What I want to know is what that prior time was.

A. The construction of the Blue Ridge Railroad was commenced September 30, 1850, first payment, and it was finished in 1861. The amount invested after January 1, 1861, was $90,147.62.

By Mr. Holt:

Q. My next question, Mr. Hillman, is what do you mean by the item on the main exhibit in the last column $625,348.08?

A. That is the price which was obtained by the State of Virginia when they sold the Blue Ridge road to the Virginia Central.

Q. When was that sale made?

A. April 1, 1870.

Q. What was used in payment, bonds, cash or what?

A. Bonds for $574,921.48, accrued interest on these bonds of $50,417.64, and a check for $8.96, making a total of $625,348.-08.

Q. Have you prepared an exhibit in support and explanation of this item?

A. Yes, sir, I have.

Q. What page is it?

A. Page No. 20.

Q. Will you please file this exhibit as a part of your deposition, marking it Defendant's Exhibit No. 3, 1863, Asset C-5; Asset D-20.

A. I file it, so marked.

The paper was admitted in evidence and marked Defend-

ant's Exhibit No. 3, 1863, Asset C-5; Asset D-20, September 2, 1914, C. B.

Q. What books did you examine in making up this underlying or explanatory exhibit?

A. Ledger B., Internal Improvement Fund, folio 187; Journal D. Internal Improvement Fund, State of Virginia, folio 171.

Q. Is that exhibit true?

A. Yes, sir, it is.

Q. As appears from the books examined by you?

A. Yes, sir.

Q. Turning now to this supporting exhibit, I find that you have the same amount, $625,348.08, that appears on the main exhibit, and that you have added an item thereto that does not appear on the main exhibit of $5,833.81, making an aggregate of $631,201.89. Please explain the same?

A. The item of $5,833.81 belongs to our Schedule D which is an accrued dividend and does not appear in Schedule C, which relates to the sale of stocks and bonds and holdings of the company.

By The Master:

Q. While you claim you are entitled to the benefit of it, you claim it under another schedule and not this schedule?

A. Yes, sir.

Q. Does anything appear on the books that shows these transactions where the consideration paid to the State for bonds, that indicates the issuance of bonds that were involved, or is the entry just simply bonds?

A. The entry is generally coupon bonds or registered bonds with the interest.

Q. Does the entry refer to the class of bonds, I mean by that the purpose for which they were issued, or anything of that sort, or just simply coupon bonds or registered bonds?

A. Coupon bonds or registered bonds. Sometimes the date of issue of those bonds is mentioned, and they could probably be traced back by that.

Q. But that is not universal?

A. No, sir.

Q. That is, that is not true of every entry.

A. It is not. I suppose, your Honor, by going back to the bond record where individual bonds are mentioned, and picking out that date, covering the several thousand numbers which would be there, that it could be obtained.

Q. That is, with a sufficient amount of work they could probably be traced?

A. Yes, sir.

Q. So that you would be able to tell from what issues they were made?

A. Yes, sir.

Q. But there is nothing in the books that gives that information so far as the entries are concerned?

A. No, sir, now and then there might be an isolated case where we could.

By Mr. Holt:

Q. The sixth item on the main exhibit is Alexandria, Loudoun & Hampshire Railroad Company stock, $1,017,248 Please explain that sum.

A. That is the amount of the money which the State of Virginia had invested in the stock of the Alexandria, Loudoun & Hampshire Railroad Company, and there is no record, as far as I know, to show how many shares of that stock were obtained by the state for this expenditure of money.

Q. What does the same item mean in the first column of the main exhibit?

A. It means that that was considered the value on June 20, 1863, it being carried on the books of the State of Virginia at that sum.

Q. What is the meaning of the item, $50,862.40 in the last column?

A. It means that this stock was disposed of at $5. a share on November 25, 1867.

Q. To whom? Who was the purchaser?

A. Bought by the Alexandria, Loudoun & Hampshire Railroad Company.

By The Master:

Q. By what?

A. By the railroad company itself.

Q. The same company purchased its own stock?

A. Yes, sir.

By Mr. Holt:

Q. Have you prepared an exhibit, a supplemental exhibit, in support and explanation of this item?

A. Yes, sir, I have.

Q. What page is it marked, please?

A. Page 21.

Q. Will you file it as a part of your deposition and mark it Defendant's Exhibit No. 3, 1863, Asset C-6?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-6, September 2, 1914, C. B.

Q. In making up this supporting exhibit what record or books, if any did you examine? Instead of enumerating those I will change that and put it in this way. Does this supporting exhibit show upon its face the books and records examined by you in making up the same?

The Master: And why don't you say, and are the amounts correctly stated, and that will cover it all.

The Witness: Yes, sir, it does.

By The Master:

Q. And the amounts are correctly stated?

A. Yes, sir.

By Mr. Holt:

Q. The seventh item upon the main exihibit 3 is Winchester & Potomac Railroad Company loan, $83,333.33; and on that exhibit it is set down as of the same value as of June 20, 1863, and in the last column as having been paid in full. Is that correct?

A. That is correct.

Q. Have you prepared an exhibit in demonstration and explanation of this item?

A. Yes, sir, I have.

Q. What page is it, please?

A. Page No. 22.

Q. Will you file this supporting exhibit as a part of your deposition and mark it Defendant's Exhibit No. 3, 1863, Asset C-7?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-7, September 2, 1914, C. B.

Q. Does this supporting exhibit upon its face show the books and records examined by you in making up this exhibit?

A. Yes, sir, it does.

Q. And does the exhibit correctly represent those books and records?

A. Yes, sir.

By The Master:

Q. How was that loan paid, in cash or bonds?

A. Bonds. Your Honor, there is no record of whether that was a bond or cash received; it was received by the Treasurer of the Commonwealth, and no statement made as to whether it was money or bonds.

Q. Is there no cash book extant?

A. There is no cash book, it was journal entry, Journal D. September 30, 1862.

Q. Is there any cash book covering that period? Is there or is there not?

A. There is a cash book, yes, sir, for that period.

Q. What does the cash book show as to that item?

A. I cannot say, but I will know in a few minutes.

Q. Look it up. The cash book ought to determine whether it was cash or bonds.

A. Yes, sir.

Mr. Holt: When we get through all of this we are going to ask a general question about that matter of bonds and cash.

The Witness: I find it was paid in bonds.

By Mr. Holt:

Q. The next item upon the main exhibit No. 3, 1863, is No. 8, Vrginia & Tennessee Railroad Company, Loan, and the item is $800,000. Please explain it.

A. That is the face value of a loan made by the State of Virginia to the South Side Railroad Company.

Q. Is it the South Side now or the Virginia & Tennessee?

A. I beg pardon, the Virginia & Tennessee.

Q. When was that loan made, Mr. Hillman, if you know?

A. It was made prior to January 1, 1861.

Q. We find the same item in the first column, $800,000., on the main exhibit. What does that mean?

A. It means that this loan was taken at its face value, being so carried upon the books of the State of Virginia.

Q. What does the item $686,685, upon that subject in the last column mean?

A. It means that that was the amount for which the loan was finally disposed of.

Q. Do you mean settled or paid?

A. Paid, yes, sir.

Q. To whom?

A. Paid to the State of Virginia by the Virginia & Tennessee Railroad Company.

Q. When was it settled or paid?

A. There was a payment of $200,000, made on it on June 19, 1863, reducing the loan from $1,000,000 to $800,000; on June 30, 1863 a further cash sum of $300,000 was paid; on August 6, 1863, $100,000 was paid; on August 7, 1863, $100,000; on September 11, 1863 there was $186,685 paid. There were no further payments made, as far as we can find on account of this loan.

Q. Have you prepared an exhibit in support of this item?

A. Yes, sir, I have.

Q. What page is it?

A. Page 24.

Q. Page 23 here is a statement of loans and interest, Virginia & Tennessee Railroad Company and page 24 is the same thing.

The Master: Page 23 does not seem to fit in very well.

By Mr. Holt:

Q. Please explain what is the difference between page 23 and page 24, composing the underlying exhibits. One relates to one subject and the other to another, does it not?

A. Yes, sir.

Q. What are they?

A. Page No. 23 relates to the payment of the interest on the loan of this million dollars, of which the $800,000, was a part; and page 24 relates to the payment of the principal.

Q. Very well. Now then, in support of this item you have prepared two exhibits, one relating to interest and one relating to principal; is that so?

A. Yes, sir.

Q. Will you please file the one relating to interest on this loan as Defendant's Exhibit No. 3, 1863, Asset C-8 and Asset D-7.

A. I file it, so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-8 and Asset D-7, September 2, 1914, C. B.

Q. Will you now likewise file the second supporting exhibit, page No. 24, relating to the principal of this loan, and mark it Defendant's Exhibit 3, 1863, Asset C-8 and Asset D-7.

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-8 and Asset D-7, September 2, 1914, C. B.

Q. Do these two supporting exhibits last mentioned set

forth the records and books examined by you in making up the same?

A. Yes, sir, they do.

Q. Do they correctly represent those books?

A. Yes, sir.

By The Master:

Q. As I understand it all payments on this loan were cash payments?

A. Yes, sir.

Q. Do the books show anything as to whether or not this loan was adjusted for the final payment of $186,685, leaving the total payments on account of principal at $686,685?

A. They show no such adjustment.

Q. The account of that transaction stops with that item?

A. Yes, sir.

Q. And that leaves a balance due on the principal?

A. Yes, sir.

Q. Which apparently has not been paid?

A. Yes, sir, and in addition to that I call your attention to the foot note on page 24, wherein I state that the loan was never paid in full, but the unpaid balance was turned over to the A. M. & O., together with other items of the Southside Railroad, Virginia & Kentucky Railroad and Norfolk & Petersburg Railroad, for four million dollars; see our Exhibit 6 of Class F.

By Mr. Harrison:

Q. What was the amount of the unpaid balance?

A. From this statement in the Journal entry where this statement is made it does not show what the unpaid balance was.

Q. Does your exhibit show?

A. It does not show any unpaid balance.

Q. Don't you show how many payments were made?

A. Yes, sir.

By The Master:

Q. The computation is not made on the schedule?

A. That is what I mean.

Q. Where do you find the account of the balance that appears to be due on this loan that entered into this aggregate of four million dollars that you have just been speaking of? Do you find that on the books of Virginia somewhere?

A. Yes, sir, we find the mention of the balance of the loan made, but no amount mentioned, it simply mentions turning over Vrginia's interest in this loan to the A. M. & O., but not mentioning any value.

Q. What is the A. M. & O.

A. The Atlantic, Mississippi & Ohio Road.

Q. Well, is there anything anywhere that shows the items which aggregated the four million dollars?

A. Yes, sir.

Mr. Holt: That is in a separate schedule, your Honor, that A. M. & O.

Q. Then when we come to that that will show how the various items are accounted for?

A. Yes, sir.

Q. And that ought to leave a balance due on this loan?

A. Yes, sir, but there are no figures representing what that balance was; it simply turns over all the State of Virginia's interest in the loan, without mentioning any amount.

Q. Yes, but there are other details mentioned which go to make up the four millions?

A. Yes, sir, but the aggregate of the other details mentioned amounted to considerably more than four million dollars, and four million dollars was taken in settlement.

Q. A lump sum adjustment?

A. Yes, sir.

The Witness: There was an act passed on February 22, 1866, to relieve this road from the amount that they owed the State, which then amounted to about $146,000, by the payment of $83, 333.33, in State bonds.

The Master: That is the Winchester proposition?

The Witness: Yes, sir.

By Mr. Holt:

Q. The next item upon the main exhibit is No. 9, South Side

Railroad Company loan, $800,000, is the first sum mentioned. Please explain it, Mr. Hillman?

A. That was the face value of the loan by the State of Virginia to the South Side Railroad Company prior to January 1, 1861.

Q. What is the meaning of the same item in the first column of the main exhibit, $800,000.

A. That this loan was carried on the books of the State of Virginia at face value of $800,000.

Q. What is the meaning of the note, turned over to Atlantic, Mississippi and O., on this subject in the third column?

A. That the A. M. & O. bought this loan as well as other items when they paid $4,000,000., to the State of Virginia for their holdings in the Virginia & Tennessee, South Side, Norfolk & Petersburg, and the Virginia & Kentucky Road, which Virginia & Kentucky Road was not mentioned here.

By the Master:

Q. You refer to that transaction when they gave a second mortgage on the road for $4,000,000?

A. Yes, sir.

By Mr. Holt:

Q. Have you prepared an exhibit in support and explanation of this item No. 9?

A. Yes, sir, I have prepared a sub-statement showing the interest, the settlement of the interest upon the above loan.

Q. Of $800,000?

A. Of $800,000, yes, sir.

Q. Is it page No. 25?

A. It is, yes, sir.

Q. Will you be kind enough to file it as part of your deposition, marking it Defendant's Exhibit No. 3, 1863, Asset D-8; Asset C-9?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset D-8; Asset C-9, September 2, 1914, C. B.

Q. Does that supporting exhibit indicate upon its face the books and records examined by you in making up the same?

A. Yes, sir, it does.

Q. Does it correctly and truly set forth the condition of the books and records so examined by you?

A. Yes, sir.

Q. No. 10 on the main exhibit is Norfolk & Petersburg Railroad Company loan—

The Master: On page 25, these items of payments are noted in detail here as payments of interest?

The Witness: Yes, sir.

The Master: And payments in cash?

The Witness: Payments of interest in cash, yes, sir.

Q. No. 10 on the main exhibit is Norfolk & Petersburg Railroad loan, $300,000. What do you mean by that?

A. I mean that on June 20, 1863, the Norfolk & Petersburg Railroad Company had a loan from the State of Virginia of $300,000. It was not discovered apparently by the State of Virginia until 1870 that part of this investment in the Norfolk & Petersburg Railroad was stock and part of it was a loan. The entry was then made separating the two and relating at length that such an error had been made on its books.

Q. The $300,000 represents the loan when separated from the stock, does it?

A. Yes, sir.

Q. What does the item $137,000 in that connection mean in the first column?

A. It means that of this $300,000 loan there had been paid in cash $137,000 prior to the date of December 22, 1870. This appears from the Journal entry wherein the $4,000,000 is taken up as the purchase price of these four roads and shows that there was a balance outstanding in this road of that date of $168,000. and that $137,000 had been paid. It is the only evidence of value we have of that loan at the date June 20, 1863, or how much it was disposed of for outside of its inclusion in the lump sum of $4,000,000 and therefore the sum of $137,000

is entered as its value June 20, 1863, and disposed of for the same amount.

By the Master:

Q. Was there a regular account of the State of Virginia with this road dating back to the time when they appear to have invested in the sum of $1,499,970?

A. Yes, sir.

Q. Is there anything about that account that indicates how they ascertained that $300,000 was a loan and not an investment in stock?

A. No, sir, nothing except this Journal entry, which was not made until 1870.

Q. $137,000 in cash had been paid in meanwhile, which must have thrown the account out of joint a good deal.

Mr. Harrison: Why do you speak of that entry as a discovery?

The Witness: I mean that the State of Virginia did not discover the fact that they had a loan outstanding until 1870, or if they did discover it, no record of it was made on their books until that date when the Journal entry states that they had discovered that $300,000 was a loan.

Mr. Holt: I expect the underlying exhibit will give that history.

Q. On that very date the $137,000 was probably paid in I infer from what you say about the books.

A. Yes, sir; I have an inference that it was paid in from the fact that only $163,000 of that was outstanding when they turned it over to the A. M. & O.

Q. Was that in 1870?

A. Yes, sir.

Q. At the very time that the entry shows that there was a loan of $300,000 it also shows the facts from which you infer that the loan was only $165,000?

A. No, sir, there is no entry on the books to show that fact; there is only the inference that they disposed of the entire amount for $4,000,000.

Mr. Holt: All he can do, your Honor, is to give the facts for whatever your Honor may consider them to mean hereafter.

Q. I understand the fact is that there is a Journal entry in these records that shows that in making this mortgage of $4,000,000 there also among other things was taken into account $163,000.

A. Yes, sir.

Q. That was said to be a loan to this Norfolk & Petersburg Railroad?

A. Balance of the loan, yes, sir.

Q. And that same entry is the first entry that indicates the existence of a $300,000 loan, am I right about that?

A. No, sir. There is an entry on the books transferring from the stock of the Norfolk & Petersburg to a loan of the Norfolk & Petersburg $300,000.

Q. Does that antedate this general entry upon which the $4,000,000 transaction was predicated, and if so by how much?

A. It is made the same date.

Q. On the same day?

A. Yes, sir.

The Master: Of course we have to take it for what it is worth.

By Mr. Holt:

Q. Have you prepared, Mr. Hillman, an exhibit in support and explanation of this loan—

The Master: I think we had better have those entries copied and put in the record. You can simply say "I make the entries above referred to part of my testimony and put them in," so that when we have occasion to look for it we can see just exactly what the entries show. Put in the date and everything.

The Witness: Your Honor, I will have copies of those entries made and filed.

The Master: Just simply say "I make those entries part of my testimony," and then let them go right in here.

By Mr. Holt:

Q. My question is whether you have prepared an exhibit explaining this loan to the Norfolk & Petersburg Railroad Company or have you prepared a supporting exhibit covering

the loan and stock; the stock we have not inquired about yet?

A. I have prepared an exhibit covering the loan and the stock.

Q. Then before coming to that Exhibit I will ask you about the stock of the Norfolk & Petersburg Railroad Company, No. 10, Main Exhibit. What is the meaning of the item $1,199,970 in that connection?

A. It means that that is the amount of the money which the State of Virginia invested in Norfolk & Petersburg Railroad stock.

Q. Distinct from the $300,000 loan or included in the $300,000 loan?

A. Distinct from the $300,000 loan.

Q. What is the meaning of the same item in the first column of the main exhibit?

A. It means that this was carried on the books of the State of Virginia at $1,199,970. I would like to say here that they had an even amount of stock of $1,200,000 for an investment of $1,199,970.

Q. What is the meaning of the note in the last column, turned over to A. M. & O.?

A. It means that this stock was turned over to the Atlantic, Mississippi & Ohio Railroad Company.

Q. In the $4,000,000 transaction?

A. In the $4,000,000 transaction.

Q. Does page No. 26 represent the exhibit in support of the loan and stock of the Norfolk & Petersburg Railroad?

A. Yes, sir, it does.

Q. Will you please file it as part of your deposition and mark it Defendant's Exhibit No. 3, 1863, Asset C-10 and D-9.

A. I so file it, marked as requested.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-10; Asset D-9, September 2, 1914, C. B.

Q. Does this supporting exhibit last referred to show upon

its face the books and records and official documents examined by you in making up the same, and is it correct?

A. Yes, sir, it does and it is.

Q. The next item upon the main exhibit is No. 11, Roanoke Navigation Company stock. The item is $80,000. Please explain it?

A. It represents the amount of the Roanoke Navigation stock held by the State of Virginia June 20, 1863, par value and amount expended to acquire the stock.

Q. What is the meaning of the same item in the first column on the main exhibit?

A. It means that it was carried upon the books of the State of Virginia at par on $80,000.

Q. As of what date?

A. June 20, 1863.

Q. What is the meaning of the items $3,832 in the item marked "Disposed of for?"

A. It means that this stock was disposed of for the amount of $3,832 face.

Q. Who sold it?

A. It was sold by decree of the court.

By The Master:

Q. What sort of a proceeding was it, a dissolution of the company?

A. What is it?

Q. Was it a dissolution of the company or what was it?

A. Yes, sir.

Q. A dissolution of the company?

A. A dissolution of the company.

Q. And the result of the dissolution and the sale of all the stock was a distribution to the State of that sum of money?

A. Yes, sir.

Mr. Harrison: What was the amount?

Mr. Holt: That was the amount, Mr. Harrison, realized by decree of the court for Virginia's holding in the company.

By Mr. Holt:

Q. Have you prepared an exhibit in support and explanation of this item?

A. Yes, sir, I have.

Q. What is the number of the page?

A. 27.

Q. Will you file it as a part of your deposition and mark it Defendant's Exhibit No. 3, 1863, Asset C-11.

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-11, September 2, 1914, C. B.

Q. Will you state whether or not this exhibit shows upon its face the books, records and official documents examined by you in making up the same, and also state whether or not it is true.

A. Yes, sir.

Q. The next item upon the main exhibit is No. 12, Alexandria Canal Company stock. The item is $272,000. What does it mean?

A. It means that the State of Virginia had invested $272,000 in the Alexandria Canal Company stock, and had received that amount par, $272,000, of that stock.

By The Master:

Q. Do you mean it shows that they bought $272,000 worth at par?

A. Yes, sir.

By Mr. Holt:

Q. Did she own this stock on June 20, 1863?

A. Yes, sir.

Q. What is the meaning of the same item on the first column of the same exhibit?

A. It means that that was the par of the stock.

Q. Did she carry it upon here books at that valuation?

A. And was carried upon her books at $272,000, the par, on June 20, 1863.

Q. What is the meaning of the item in the last column, $764,47?

A. It means that in 1887 the Orange & Alexandria stock was disposed of for $816., and that on the same—

Q. You do not mean Orange & Alexandria, do you?

A. I beg your pardon, and that the Alexandria Canal Company stock was disposed of for $816., and that the costs of this sale, which were entered upon the same memorandum, amounted to $51.53, leaving a net receipt of $764.47.

Q. To the State of Virginia?

A. To the State of Virginia.

Q. Now, the date of that sale was what?

A. July 1, 1887.

Q. Have you prepared an exhibit in support and explanation of this item?

A. Yes, sir, I have.

Q. What is the number of the page, please, sir?

A. Page 28.

Q. Will you file the same as a part of your deposition, marking it Defendant's Exhibit No. 3, 1863, Asset C-12?

A. Yes, sir, I so file it.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-12, September 2, 1914, C. B.

Q. Does this exhibit show upon its face the books, records and official documents examined by you in making up the same, and does it truly represent them?

A. Yes, sir.

Q. The thirteenth item on the main exhibit is Upper Appomattox Company stock. The item is $66,500. What does that represent.

A. That represents the amount of the Upper Appomattox Company stock bought by the State of Virginia at par, $56,-500.

Q. Did she own that on the 20th day of June, 1863?

A. Yes, sir.

Q. What does the same item mean in the first column of that exhibit?

A. It means that it was carried on the books of the State of Virginia at par, $56,500, on June 20, 1863.

Q. What is the meaning of the item in the third column, $16,144.26?

A. It means the price which was obtained for this stock when sold by the State of Virginia.

Q. When was the sale made?

A. Partly in 1875, partly in 1881, and the final payment made in 1884.

Q. Well, those were the payments, but when was the sale made, or were there three sales?

A. The sale was made in 1875. with the first payment, and then the payments dragged along until 1884 before they were finally settled.

By The Master:

Q. To whom was it sold? No matter, if you cannot remember.

A. It was sold to its ownself, it was bought by the Upper Appomattox Company.

Q. Well, the corporation bought its own stock?

A. Yes, sir.

By Mr. Holt:

Q. How did it pay for the same?

A. On February 24, 1875, there was a cash payment made of $3,000; on January—- date omitted——1881, there was a payment made of $2,280.

By The Master:

Q. Cash?

A. Cash.

The Witness: And on July 8, 1884, there was a payment made of $10,500 in Virginia coupon bonds, of $300 in Virginia registered bonds, and $64.26 in fractional certificates of Virginia bonds.

By Mr. Holt:

Q. Have you prepared an exhibit in support and explanation of this item?

A. Yes, sir, I have.

Q. What is the number of the page, please?

A. Page No. 29.

Q. Will you file this supporting exhibit and mark the same Defendant's Exhibit No. 3, 1863, Asset C-13?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-13, September 2, 1914, C. B.

Q. Does this supporting exhibit indicate upon its face the books, records and official documents from which you made up the same?

A. Yes, sir, it does.

Q. Is it a true exhibit?

A. Yes, sir.

Q. The fourteenth item upon the main exhibit is Dismal Swamp Canal Company stock. The item is $190,000. Explain it, please.

A. This is the amount of money that Virginia invested in the Dismal Swamp Canal Company stock at par, $190,000.

Q. Was she the owner of that stock still on the 20th of June, 1863?

A. Yes, sir.

Q. What is the meaning of the same item in the first column upon the main exhibit?

A. That on June 20, 1863, this stock was carried at par on the books of the State of Virginia.

Q. In the last column what is the meaning of the item, $9,935.99?

A. It means that in 1868 the State of Virginia sold its entire holdings in the Dismal Swamp Canal Company to that company for $9,935.99 cash.

Q. What was the date of that sale—I believe you did give me the year, though, 1868.

A. Yes, sir, it is on pages 238 and 241 of the Journal N of the Board of Public Works, but unfortunately the date has been omitted, the exact month and date.

Q. But the year is given?

A. The year is given and the pages are given.

Q. Have you prepared an exhibit in support and explanation of this item?

A. Yes, sir, I have.

Q. What is the page number of it?

A. Page No. 30.

Q. Will you file the same as a part of your deposition, marking it Defendant's Exhibit No. 3, 1863, Asset C-14.

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-14, September 2, 1914, C. B.

The Witness: I call the attention of the Court to the fact that the Board of Public Works, after receiving this money, invested it in Virginia bonds, and turned those into the sinking fund in lieu of the cash, as will appear from an investigation of the foot note upon the exhibit which I have just filed.

Q. Do you mean the underlying exhibit, the supporting exhibit?

A. Yes, sir.

Q. Page 30?

A. Page 30.

Q. It is explained there?

A. Yes, sir.

Q. Does this supporting exhibit indicate upon its face the books, records and official documents from which you made up the same?

A. Yes, sir.

By The Master:

Q. And is it true?

Mr. Holt: I was going to ask him.

By Mr. Holt:

Q. Did you truly make it up?

A. Yes, sir.

Mr. Holt: I am a little awkward on that, your Honor. I beg your pardon.

Q. The fifteenth item upon the main Exhibit 3 is loan to Washington College. The item is $2,000. What does it mean?

A. It means that upon June 20, 1863, Washington College owed the State of Virginia $2,000 on account of moneys advanced to that college.

Q. When were they advanced to the college?

A. They were advanced prior to 1861, and the loan had been reduced from $4,000 to $2,000.

Q. On what date?

A. Between 1861 and 1863; I do not know the dates.

Q. What is the meaning of the same item in the first column of the main exhibit?

A. It means that this loan was carried on the books of Virginia at its face value, $2,000.

Q. What is the meaning of the same item in the last column?

A. It means that the loan was finally paid on January 1, 1896, in full, in the meantime having paid interest.

By The Master:

Q. In the meantime having paid the interest?

A. Yes, sir.

By Mr. Holt:

Q. How was this payment made, in cash or in securities of any kind?

A. In money.

Q. Have you prepared an exhibit in support and explanation of this item?

A. Yes, sir, I have.

Q. What is the page number of it ?

A. Page 31.

Q. Will you file the supporting exhibit and mark it Defendant's Exhibit No. 3, 1863, Asset C-15, Asset D-11?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-15, Asset D-11, September 2, 1914, C. B.

Q. Does this exhibit show upon its face, books, records, and official documents from which you made up the same, and is it true?

A. Yes, sir.

Q. The sixteenth item upon the main exhibit is Richmond Academy bonds, and the item is $400. Tell us what it is.

A. It is an investment of the State of Virginia in the bonds of the Richmond Academy at par, $400, or at face value.

Q. Did she own these bonds on the 20th day of June, 1863?

A. Yes, sir.

Q. What is the meaning of the same item in the first column of the main exhibit?

A. That the bond is carried at its cost, par, or face value, on the books of Virginia, June 20, 1863.

Q. What is the meaning of the same item in the last column?

A. That on February 5, 1896, the State of Virginia received the par of this bond, it having in the meantime paid the interest regularly.

By The Master:

Q. In cash?

A. In cash.

By Mr. Holt:

Q. Have you prepared an exhibit in support and explanation of this item?

A. Yes, sir, I have.

Q. What is the page number?

A. Page No. 32.

Q. Will you file the same as a part of your deposition marking it Defendant's Exhibit No. 3, 1863, Asset C-16, Asset D-12?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-16, Asset D-12, September 2, 1914, C. B.

Q. You may now tell us whether or not this exhibit indicates upon its face the books, records, and official documents from which you made it up, and whether or not it truly represents these documents?

A. Yes, sir. .....

Q. The 17th item upon the main exhibit is claim against the United States Government; the item is $298,369.74. Please explain it.

A. This is the principal of a loan made by Virginia to the United States Government as of the date of July 1, 18—.

Q. What is the meaning of the same amount set down in the first column of the main exhibit?

A. It means that the value of that loan on June 20, 1863 was $298,369.74.

Q. Do you mean that was the principal of the loan as of that date?

A. Yes, sir.

Q. As shown upon the books of Virginia?

A. No, sir, it does not show upon the books of Virginia. There is no place that it shows on the books of Virginia.

By The Master:

Q. It does not have any account with that loan?

A. There is no record that we can find of that loan on the books of Virginia.

By Mr. Holt:

Q. Where then do you get your authority for this, Mr. Hillman?

A. From a record of the settlement of this claim with the United States Government, which is on file in the Second Auditor's office in a particular file kept in his vault.

Q. Of Virginia?

A. The Second Auditor of Virginia, yes, sir. And the

settlement is confirmed by the papers which we have here this morning, a statement from the Assistant Treasurer of the United States—

Q. Do you mean the two certificates I offered in evidence this morning, made by the Assistant Treasurer of the United States?

A. Yes, sir.

Q. That relates only to principal, as I understand, this amount?

A. Yes, sir.

Q. What is the meaning of the same amount in the last column?

A. It means that the State of Virginia received $298,369.74 for the face of this loan.

Q. When was it received?

A. It was received in 1903, but the transaction was dated back to 1894.

Q. Have you prepared an exhibit in support and explanation of this item?

A. Yes, sir, I have.

Q. What is the page number?

A. Page No. 33.

Q. Will you file this supporting exhibit and mark it Defendant's Exhibit No. 3, 1863, Asset D-13, Asset C-17?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset D-13, Asset C-17, C. B.

Q. Does this exhibit show upon its face the documents, records and books upon which it is based, and does it truly represent the same?

A. Yes, sir, it does.

Q. The next item upon the main exhibit is No. 18, claim against Selden, Withers & Co., and it seems to be $132,842.74. Please explain it?

A. This is the amount which was collected from the firm of Selden, Withers & Co., which had failed and which at the time of the failure had had in their hands a large amount of Virginia securities for disposal, and also had disposed of a large amount of securities which were unaccounted for; and

these were the relics that they were able to collect on account from their various assets and assignments for their debt after 1861.

Q. When was this collection made by the State of Virginia?

A. It was made in the years from 1866 on to 1891, at various dates.

Q. Have you prepared an exhibit in confirmation and explanation of this item?

A. Yes, sir, I have.

Q. What is the page number?

A. Page No. 34.

Q. Will you file this supporting exhibit as a part of your deposition, marking the same Defendant's Exhibit No. 3, 1863, Asset C-18?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-18, September 2, 1914, C. B.

Q. Tell us now whether or not this exhibit indicates upon its face the records, books and public documents from which you made it up, and whether or not it truly represents the same.

A. It contains the pages and references to each document from which the amounts were drawn. Whether or not it represents all that was received from this firm on account of the debt I am unwilling to say, but I am willing to state that at least this much was received, and it is all that I could trace.

By The Master:

Q. Well, it represents all that you could find on the books?

A. All that I could find, yes, sir. May I call your attention—

Q. Is there anything on the books to show the total amount of the indebtedness of the stock broker's concern to the State?

A. No, sir. May I call your attention to the fact that some of these accounts which were received in Marietta & Cincinnati stock were converted into cash, and afterwards the cash invested in State bonds.

By Mr. Holt:

Q. What State bonds?

A. The State bonds of Virginia, sir; and that is shown in a foot note on this Page 24, and explains how the item of $152,023.04 claimed in our supplemental answer was originally determined.

Q. Did you mean page 24 or page 34?

A. 34.

Q. The last item on the main exhibit is No. 19, Richmond, Fredericksburg & Potomac Railroad Company, dividend bonds. The item is $122,464. Please briefly explain that item.

A. This is the amount of bonds issued by the Richmond, Fredericksburg & Potomac Railroad Company in lieu of cash dividends and is called not only a dividend bond but is sometimes called a certificate of debt of the Richmond, Fredericksburg & Potomac road. This is the amount which the State of Virginia received on its account, $122,464.

By The Master:

Q. Then they carried it on their books at that sum, and they still have it on, is that right?

A. Yes, sir, and it has paid interest and dividends ever since.

Q. Do you mean to say that they have regularly paid interest on the dividend bonds?

A. Yes, sir.

Q. And are they still held in the treasury of the State of Virginia? I see your schedule here says they are on hand.

Mr. Holt: He is looking for the answer to your question.

A. They are not on hand. They were sold.

Q. Explain it?

A. It was paid on July 1, 1863.

By Mr. Holt:

Q. You say "it;" do you mean they, the bonds?

A. Yes, sir, the bonds, or the certificate of debt.

By The Master:

Q. Then what you mean by on hand is that they were on hand June 20, 1863, is that it?

A. They were on hand, but the notation says on my exhibit that they are on hand; they are not; it is an error in that second column.

Q. Sold or paid—were they paid?

A. Yes, sir, paid, as my supporting exhibit or sub-exhibit shows that sale.

By Mr. Holt:

Q. Have you prepared an exhibit in support and explanation of this last item, No. 19?

A. Yes, sir, I have.

Q. What is the page number?

A. Page No. 35.

Q. Will you file the supporting exhibit and mark the same Defendant's Exhibit No. 3, 1863, Asset D-6; Asset C-19?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset D-6; Asset C-19, September 2, 1914, C. B.

Q. Does this exhibit indicate upon its face the books, records and documents from which you made it up and have you truly made it up therefrom?

A. Yes, sir.

Mr. Holt: Now, your Honor, I believe that finishes that omnibus and is at least one half of all these exhibits.

The Master: That would seem to be, yes.

Mr. Holt: Now, if your Honor is willing to let us go, we will be glad to do it.

The Master: We will adjourn in a few moments to tomorrow at 10 o'clock. It may be that I ought to make a sug-

gestion something like this. In the first place, I am offering no opinion one way or the other on anything that is before me; but there is a large mass of detail material that has been placed in here by the State of West Virginia and as to which they contend that their evidence either does show or will ultimately show or tend to show a certain condition as to value. I would expect the State of Virginia, so far as those contentions can be answered by available proof, to meet each one of the items. If it should happen to turn out that there is an item suggested by West Virginia as to which there may be some evidence tending to establish a certain value and there is no countervailing testimony, it may place me in a position where I would have to find in accordance with whatever testimony might be submitted by them. I only make this suggestion with the object of having each side be careful as to all these items, whatever they may be. I cannot carry these in my head, and if it should turn out that some of these items do not happen to be certain, of course the parties must bear in mind that the Master may have to take into account the case exactly as he finds it, even though the evidence may not be very strong, if there does not happen to be anything in opposition. The parties must understand that the Master may be in a position where he may have to take what he finds, and report accordingly.

Mr. Harrison: We expect to deal with each item.

The Master: Then we will suspend until tomorrow at 10 o'clock.

The Witness: This cash that I have marked on hand here will change the total of this omnibus exhibit, and I will have Mr. Leeds of my force just make the changes.

The Master: Certainly. Make the changes on the schedule which you submit to the stenographer and make a like change upon the exhibits that they have, so that they will be in a position to check the thing up accordingly.

I think we have made very good progress today.

Adjourned to September 3, 1914, at 10 A. M.

BEFORE THE MASTER

Richmond, Va., September 3, 1914.

Present the same counsel as on yesterday.

Mr. Holt: Your Honor, in looking at page 379 of the typewritten report of the evidence, I find that pages 9, 10 and 11, constituting one of the underlying exhibits inquired about yesterday, were proven but not filed and marked. It seems that we came to the point where Mr. Hillman stated that they correctly represented the books of the State of Virginia, and then we became diverted for some reason or other, and they were not filed.

The Master : If there is no objection the stenographer can insert right there, wherever you wish it, the statement that they are filed, or that they were filed and marked. This correction need not appear this morning in the record, but the record will be corrected in accordance with that suggestion.

Mr. Holt: They should be marked Defendant's Exhibit No. 3, 1863, Asset C-1, Asset D-1, consisting of sheets 1, 2 and 3.

The papers were admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-1, Asset D-1, three sheets, September 2, 1914, C. B.

Mr. Holt: We have also discovered that page 13, being one of the underlying exhibits, was not filed, and we desire now to file it and mark it Defendant's Exhibit No. 3, 1863, Asset C-2, Asset D-2.

The Master: We will have that filed and have it appear in the transcript in the place where it ought to have been put in. When the case is printed, Mr. Harris, you will look out for that.

The paper was admitted in evidence and marked Defendant's Exhibit No. 3, 1863, Asset C-2, Asset D-2, September 2, 1914, C. B.

The Master: I understand Mr. Hillman wants to make some change in some schedule.

Mr. Hillman: They have all been changed.

Continuation of the direct-examination of
CONWAY W. HILLMAN

By Mr. Holt:

Q. Is there any explanation, Mr. Hillman, that you desire to make or any correction relative to the exhibits introduced yesterday?

A. No, sir. That correction of which I spoke will appear in the exhibits which we are about to take up, and I have corrected the copies.

The Master: My attention is called this morning to the fact that so much of the case as is already printed, involving several hundred pages here, is of course still in type, and with the capacity of the office here it would be a convenience to them to be able to distribute this type as soon as may be. In order to do that they will have to strike off their final number of copies and then distribute this type and keep going on. They are in a position where they can do that provided that this record as we have it now is satisfactory to both sides. I would like to inquire whether or not you have made such examination of it upon both sides that we can now tell the printer that he can distribute this type after he has printed the required number of copies, and if not—how is it from Virginia? Have you examined so that you are satisfied that the record is all right?

Mr. Harrison: I did not examine it with a view of anything except refreshing my mind about the matter. I have been over a good part of the report that was handed to me last night.

The Master: Then before it is distributed you prefer to have somebody look at it carefully?

Mr. Anderson: I observed some typographical errors in the printing.

The Master: There are several changes to be made, that is, changes that have already been called attention to are to be made. If with those changes made the record is agreeable to both sides, it would be a convenience to the printer to let him print his complement of copies up to that stage and distribute his type and go on. I suppose he has not type enough without embarrassing him to keep all standing. If it is agreeable I will simply say to Mr. Harris that when the corrections that have been suggested are made the record may be considered as final and he may print the final hundred copies and distribute his type and then be prepared to go on with the balance of the case. Is that agreeable? Of course the suggestion is that if either side desire additional copies in addition to the one hundred they will notify the printer so that he will print them. I thought one hundred would be all that we would need.

Mr. Anderson: I would like to examine the record a little more critically than I have.

Mr. Holt: I would rather the printer would hold his type for a little while yet, for this reason, there are some additional corrections to be made, not of a formal nature but of a substantial nature. Mr. Hillman has called my attention to them. We will try and accomplish them to-day so that the type may be used.

The Master: We will let the question of distributing the type suspend until to-morrow morning. Of course I do not wish to push you unduly, but other things being equal it would be great convenience to the printer if we could let him distribute his type. So the understanding will be if possible to-morrow morning both sides will report such changes as they desire to be made.

Mr. Anderson: As to any variations in the schedules, we will have to leave that to our friends of West Virginia.

The Master: Whatever either side does, the record should show and our attention be called to it in open session and if there is any objection to any correction, of course that correct-

tion must not be made until each side has the opportunity to make examination.

Mr. Holt: Of course, your Honor, any corrections that we will undertake to make will be made upon the witness stand.

The Master: Certainly. Subject to a substantial controversy about some item, what I intend is to have the original record, with these corrections that may be suggested, printed, so that the record will not disclose the fact that any errors have been made. There is no reason why that should not be done. There is no reason why the record should be encumbered with immaterial changes or immaterial errors. We will have one clean record when we get through, unless something comes up which anybody thinks should be changed on the record.

Mr. Anderson: I have to report to your Honor that in going over the typewritten copy of the proceedings of yesterday, the representative of West Virginia and myself were not able to agreee as to what might be eliminated. It seems to me that we might eliminate a large mass of that report containing the colloquies between the Master and counsel, as to immaterial questions, because the court will never consider them for a moment, as to the mode of procedure here, and matters of that kind. Deferring to the wishes of our friends from West Virginia I have not insisted on striking it out, but I think it is my duty to report the facts to the Master.

The Master: I am not going to enter into the question of whether it ought to go out or whether it ought to stay in. Of course I am required to report this record. I cannot perhaps anticipate in advance just what may be material on one side or the other. My own view of it is that you ought to agree among yourselves and make the record as concise as possible, but I shall expect that you agree on that, because I am not going to be in a position when I get through with this case of being criticised by one side or the other for having eliminated anything from the record which either side may think would shed some light on the controversy. This need not go into the record.

(The Master then made some further observations which were not recorded by the stenographer.)

Mr. Hogg: I think we shall have no trouble about agreeing what ought to go in and what ought to come out.

Mr. Holt: Your Honor, the reason why—of course your Honor does not know it, but my colleague does—why I have been rather a stickler for the printing of the whole thing is this. You will observe when you come to read over some of those colloquies even, that they partake of the nature now and then of stipulations, some of them do, and would not be subject to dispute hereafter. And it is for fear that something in the nature of a stipulation or an agreement might be omitted that I feel that it should all be printed. Now, so far as your Honor's statement of a moment ago was concerned, while it was not taken, by your direction, I think it would have been very well if it had been taken.

The Master: I have no objection to its being taken.

Mr Holt: It shows that you have warned us about certain things, and nobody can raise any complaint hereafter. I find it best always to get what has occurred, and let either side utilize it afterwards as they think proper.

The Master: There is no suggestion of criticism from me. There is only one purpose to be accomplished in narrowing down this record, and that is the convenience of counsel in looking over the record and making up their argument, it makes less material for them to go through; and then, so far as I am concerned, it will make less material for me to wade through when I am making my report. I would not leave anything out of the record that had any reasonable tendency to affect any of these issues, whether it was testimony or whether it was discussion. So far as your cutting anything out is concerned, it is only a matter of a few dollars, and I do not think that makes much difference in a case of this importance.

Mr. Holt: It wont make a matter of a hundred dollars difference.

The Master: And suppose it was four or five hundred dollars; what is a matter of four or five hundred dollars in printing in a case of this size.

Mr. Anderson: I do not propose to strike a word out of the record; the record of this hearing is this transcript made by

the stenographer. I only propose that we shall strike out of this record immaterial matter so far as the Court is concerned, matter that would not be informing to the Court in this case, and which the Court would not consider for one minute, and which simply encumbers the record and is confusing. As far as any stipulation is concerned, it will remain here in black and white in the stenographer's transcript to refresh the memory of either party.

Mr. Holt: My idea would be to get the stenographic report in print and let them correspond. So far as General Anderson is concerned, we all know that he will be both safe and fair in anything that he might strike out. I would not care even to look at it. I will say that.

The Master: The record that this case is going to be determined on, unless there is some decided objection to this procedure—you may take this down—the record that this case is going to be determined upon by me, and of course it will be ultimately determined upon by the Court, will be this printed record. That is what I am going to certify. I am not going to send up this typewritten transcript. Of course we are taking the typewritten transcript for the purpose of preserving what has been done here, but when I decide the case I am going to decide it on the printed record, and of course the Court will do the same thing. Whatever you both agree on will go up as the record. If there is anything that you do not both agree on, it will all be printed. If you agree to eliminate it, it will go out; and if you do not agree, it will go in. I think that makes it all clear. And consistently with that, of course both sides will do the best they can to give us as concise and as brief a record as is compatible with the interests of both parties. I am very glad to have these matters called up. A little statement of the matter clarifies the atmosphere and leaves us so that we know where we are. Now, you may proceed, Judge.

By Mr. Holt:

Q. Mr. Hillman, we come now to Class D as it appears in the exhibits to the Supplemental Answer, consisting of interest on loans and dividends on stock accrued prior to January 1,

1861, upon common investments and collected by the State of Virginia after January 1, 1861. Have you prepared a general or main exhibit analyzing this Class D?

A. Yes, sir, I have.

Q. What is the page number on the blue prints of this exhibit?

A. Page No. 36.

Q. You may state what records, books and public documents, if any have been examined by you and upon which you have based this exhibit.

A. The list is a very long one.

The Master: Excuse me, Judge. This is the summary you are inquiring about?

Mr. Holt: No. We have now come to Class D., page 36, and this is the omnibus, just like the other was the omnibus in Class C. But I want to say for the consolation of the Court that all of the underlying exhibits, with the exception of one that supports this omnibus, have already been introduced in support of the other omnibus or main Exhibit No. 3, so that this will be very short compared with the other.

The Master: Would it be a satisfactory answer to you for him to say—

Q. If you can state that they are set forth in the underlying exhibits heretofore filed in support of Schedule C, you may do so.

A. Yes, sir, they are stated in the underlying or sub-exhibits heretofore filed, with one exception, and that is on items 14, 15 16 and 17, wherein the supporting exhibit will be filed with another class and as you call for it.

Q. Will you file this exhibit, page 36, and mark it Defendant's Exhibit No. 4, 1863?

A. Yes, sir, I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 4, 1863, September 3, 1914, C. B.

Q. Does this exhibit just filed, or does it not, correctly state the figures and records examined by you?

A. Yes, sir, it does correctly state them.

Q. Looking at the first item thereon I find the Orange & Alexandria Railroad Company stock and after the same the amount $31,604.09. Will you please explain that item?

The Master: Can an explanation be made that is characteristic of all of the items that follow?

Mr. Holt: I think I can in a moment or two do that very thing. I am going to make this one very short, because the underlying exhibits are all in with one exception. Some of them require, as you will see, a little explanation, overpaid and things like that.

A. This amount represents a dividend on the Orange & Alexandria stock declared in 1854, but paid in 1864. The reference would be found on page 9 of the exhibits already filed.

Q. Do you mean that that was one dividend or is it an accumulation of dividends?

A. It was one dividend.

Q. Please explain the item just below that, overpaid $1.02.

A. If you will allow me, Judge, before answering that question, I would like to call attention to page 9 on this set of schedules wherein this amount of $31,604.09 is set out, that there was on the same page of Journal B., page 157, of the Department of Public Works of Virginia another dividend of $34,912 paid at the same time.

The Master: That is, paid in 1864?

The Witness: Yes, sir.

A. (Continuing) But no date was given as to when that dividend was declared, or what period it covered. It is therefore entered here as doubtful and no claim has been made.

The Master: You simply make a note of it and refer to it as doubtful, but do not include it in your computation, am I right about that?

The Witness: You are correct.

The Master: By reason of the fact that you are not able to fix from the books the time when the dividend accrued and was paid?

The Witness: Yes, sir.

Q. That though is no part of the $31,604.09?

The Master: No, entirely independent, as I understand it.

A. Yes, sir.

Q. The question is, Mr. Hillman, explain that $1.02 overpaid?

A. That appears upon page 11 of the exhibits which we have filed.

Q. Of this set of exhibits? I like that term.

A. Of this set of exhibits, 1863 exhibits, in the foot note, wherein there was $1.02 overpaid in the final settlement of the stocks and loans, which have been added to the dividends on the Orange & Alexandria stock of $31,604.09, so as to make the total which we have claimed for consideration of $31,605.11.

Q. Then that explains the difference between the total in the second column and that in the first, or the $31,604.09 and the $31,605.11?

A. Yes, sir.

Q. Mr. Hillman, you have prepared, I believe an exhibit in support of this item. Has it already been filed?

A. Yes, sir, it has.

Q. What underlying exhibit is it?

A. It is Exhibit No. 3, 1863, Asset C-1 and D-1, pages 9, 10 and 11.

Q. The second item upon that main exhibit is Richmond & Danville Railroad Company, stock nothing; loans nothing. What is the meaning of that?

The Master: Judge, right there, if there is no objection, wont you ask him what the significance of this item is. This follows some previous schedules which you have introduced; and what I want to get into my mind, as we start out is whether this is to be added to or subtracted from any schedule.

Mr. Holt: I can explain that in one moment, your Honor. You will find by turning to pages 54 and 55 of the supplemental answer that class C, which was covered yesterday, is made up of the proceeds of the sale of securities purchased with common funds of the two states by the State of Virginia, prior

to the 1st of January, 1861, and sold by the State of Virginia afterwards, while Class D is the one that we are now upon, which covers interest on loans and dividends upon stock in Class D. The schedules to-day relate to interest on loans and dividends on stock, while Class C. of yesterday related to principal of the loans and the amount of the stock.

The Master: Yes. But you do not perhaps get my point. What I want to get into my head is the use that I am going to make of this schedule when I come to reach my conclusion. This relates to Class D. Now the first item under Class D. is Orange & Alexandria Railroad Company, $18,144.29. Now, this item is $31,605.11. Of course I have not carried these things in my head, but what I want to get at is, is that item substituted for this item, or is it to be added to or taken from it.

Mr. Holt: Answer, Mr. Hillman.

The Witness: It is a substitute for item 1 on Class D in the supplemental answer.

By The Master:

Q. Are these items that follow here on page 36 of the same character and introduced for the same purpose?

A. Yes, sir.

The Master: If they are all of that class that answer covers the whole ground.

Mr. Holt: That is the case.

The Master: But in the absence of some explanation it would be difficult for me to understand it.

Mr. Holt: Of course your Honor understands this, that all these items set down in this schedule are to be added to the items set down in Schedule C.

The Master: Yes, but as to Class D., let me see if I understand this correctly now—as to Class D which aggregates $1,834,409.28, I am to take, as the case of the defendant, Schedule 36, which aggregates $1,355,267.63—I am right about that, am I?

Mr. Holt: That is right.

The Master: And the schedule gives the details showing the changes that it has been found necessary to make, when

you come to get at your actual facts and make your computations.

Mr. Holt: That is right.

The Master: So that practically you substitute page 36 for the schedule found under Class D. on pages 55 and 56.

Mr. Holt: That is right.

The Master: Subject to that, go ahead with the explanation. That saves me any confusion.

The Witness: Of course your Honor understands that Class D. as made up on page 55 of the supplemental answer is the January 1, 1861, schedule, while the one under discussion is the one of June 20, 1863.

Mr. Holt: You have already a schedule in under 1861.

The Master: This schedule shows the changes that were found necessary to make in order to predicate your conclusions on June 20, 1863.

Mr. Holt: Yes, that is correct.

The Master: I pay no attention to Class D. in the answer, but I do devote my time to this schedule. As to January 1, 1861, the schedule and the answer still stands so far as it is consistent.

By Mr. Holt:

Q. The second item upon this Exhibit 4 is Richmond & Danville Railroad Company, stock, nothing, nothing; and under it, loan, nothing, nothing. What does that mean?

A. It means that all interest had been paid up to this date, and that there was no accumulation of interest on the loan, and no dividend on that stock had been paid which would be prorated over this date, so that it would remain at zero as far as any interest or dividend were concerned.

Q. The third item is Richmond & Petersburg Railroad Company stock, $41,857.80. What is that?

A. That is the proportion of the semi-annual dividend from the Richmond & Petersburg stock which was declared on June 30, 1863 and paid July 1, 1863, to the sum of $23,136. The $21,857.80 is the proportion which accrued from January 1st, up to June 19, 1863.

Q. Have you filed a supporting exhibit already to this item 3?

A. Yes, sir.

Q. How has it been marked?

A. It is Exhibit No. 3, 1863, Asset 3-C and 3-D. It is numbered page 16.

Q. Page 16 of this set of exhibits?

A. Yes, of this set of exhibits.

The Master: The thing that tended to mislead me was the heading on this exhibit. I have this suggestion to make. The way this reads is: "Recapitulation of Schedule 'D' Assets. Results of revision of Schedule 'D' assets by Hillman." Now I do not find anything that relates to June 20, 1863. Taking that statement the idea presented to my mind was that it would be necessary to revise Schedule D. Now this is the revision of Schedule D as of June 20, 1863, assets by Hillman, with that in there of course the whole thing is intelligible. With it out, unless I made this inquiry, I might have had to look the record over for several hours to get the information.

Mr. Holt: That is misleading.

The Master: Suppose we have the title read this way, "Results of revision of Schedule D, as of June 20, 1863, assets, by Hillman." That makes it intelligible.

Mr. Lilly: That is a good suggestion. I think.

Mr. Holt: There is not a thing in the world on that sheet to indicate 1863.

The Master: Not the slightest in the world, and I might have to spend a day to satisfy my own mind without this explanation. Now, all these things ought to have some finger mark sticking out somewhere so that I will know what it means the minute I look at it.

The Witness: Your Honor, just a moment. You must remember that in 1861 Schedule D has also been revised and adjusted. The 1861 Schedule D, as set up by me, is not the same as that set up in the supplemental answer.

The Master: That is all true, and that would simply add to my confusion unless I have something to go and come on.

Q. Is there any reason why that heading should not be entered?

A. No.

The Master: I get to work on this schedule and I do not find anything on it to indicate what it is. If I find two revisions one of them not indicated, and what it is and what it relates to, why it would leave me in almost endless confusion.

Mr. Holt: Your suggestion is to insert after the word revision, "As of June 20, 1863," of Schedule D.

The Master: Yes. I know then that he has taken Schedule D. and adapted it as to the date of June 20, 1863.

Mr. Holt: That is exactly right.

The Witness: The heading is, "Results of revision as of June 20, 1863 of Schedule D., assets by Hillman."

Q. The fourth item is Virginia Central Railroad Company, stocks nothing, loans $6,903.33; dividend bond $2,390.99 in the first column and $9,294.32 in the second column. Please explain that briefly.

A. There was no dividend on the stock which had been traced up to that date, which it was necessary to take into account in order to determine what was due prior to June 20, 1863; therefore opposite stock the zeros are entered.

By The Master:

Q. You mean how much was due or how much had been paid?

A. Both. There is nothing to show that there was anything even due.

Q. But isn't your schedule predicated upon actual payments?

A. Subsequent payments, yes, sir.

Q. Then why do you suggest the qualification of due? What I want to get clear in my mind is this, I do not understand your estimating here things that are due in this schedule; you are estimating the things that have been actually received, and if that was due do not confuse it by referring to things that are due or not due, because that simply introduces an element that will confuse me. It must have been due in order

to have been paid, but if it is due and not paid I do not care anything about the question of it being due. This is simply a question as to whether it was paid or not; am I right about that?

A. Yes, sir.

Mr. Lilly: But the dividends and matters of that kind would have had to have accrued before June 20, 1863, and paid thereafter.

The Master: Yes, but if they had accrued but were still unpaid they ought not to have appeared in that schedule.

The Witness: Not unless they had been taken into consideration and paid afterwards.

Q. But it is necessary to make your explanation refer to dividends that are due and not paid. Just simply make an explanation so that I will not get confused.

A. I understand the criticism, your Honor.

Q. You get my point?

A. It is correct, yes, sir.

Q. What I am trying to do is so that when I look at it I won't have any trouble in studying it out, I will have it so that it will all be an open book to me and I won't have to waste any time in trying to find what a particular thing means.

Mr. Holt: I presume that all of that business on the stock of Virginia Central Railroad Company means that so far as West Virginia is concerned there is no claim whatever made on that stock.

By Mr. Holt:

Q. Go on Mr. Hilllman, please.

A. On the loans there had accrued interest, January 1, 1863, up to June 19, 1863, both dates inclusive, of $6,903.33, the total amount for the six months ending July 1, 1863, amounting to $7,350, and which was paid on July 21, 1863 as shown upon the supporting exhibit which has been filed in this case, page 19. The next item $2,390.99, is the proportion of the interest on the dividend bonds of the Virginia Central Railroad Company which Virginia held at that time and is the proportion of that interest which accrued from October 15, 1862, up to

June 19, 1863, inclusive. The payment of this dividend is shown upon the cash book No. 10, Board of Public Works, and on file in the Second Auditor's office, State of Virginia, and was for $3,519 cash.

Q. Have you heretofore filed an exhibit in support of these items?

A. Yes, sir.

Q. How has it been marked?

A. Defendant's Exhibit No. 3, Asset No. 3, 1863, Asset C-4, D-4, page 19, of the exhibits in this set of schedules.

Q. The fifth item is Winchester & Potomac Railroad Company, nothing. I will ask this question, do the ciphers in item 5 after the Winchester & Potomac Railroad Company mean that there were no dividends upon stocks nor interest upon loans to be considered so far as this schedule is concerned?

A. Yes, sir.

Q. The sixth item is Richmond, Fredericksburg & Potomac Railroad Company, dividend certificate, $3,631.69; decree of court, dividend bonds, $17,556.68; and in the last column $21,-188.37. Please explain this item and its details.

A. The $3,631.69 was the proportion of interest on the dividend bonds of the Richmond, Fredericksburg & Potomac which had accrued from January 1, 1863, to June 19, 1863, both dates inclusive. the interest was afterwards paid—

By The Master:

Q. Was it afterwards paid in a general item of yearly interest?

A. Yes, sir.

Q. That will explain the whole thing.

A. June 30, 1863, the amount of $3,866.56, the $3,631.69 being the proportion which had accrued from January 1st, up to June 19, 1863, inclusive. The next item of $17,556.68 was the amount which was recovered by a suit and on a decision of the Circuit Court of Richmond on account of interest which had not been paid upon the dividend bonds of the Richmond, Fredericksburg & Potomac Railroad. The judgment was rendered on December 30, 1872, as per Journal N, Folio 416, Board of

Public Works, State of Virginia, the State receiving $17,806.68 less an attorney's fee of $250., or $17,556.68.

Q. What was the dividend accrued, up to what time?

A. In 1861 and 1862, interest on dividend bonds.

Q. And interest up to what date? This item was interest on dividend bonds which accrued on bonds in 1861 and 1862?

A. Yes, sir.

Q. And up to what date was the interest included upon which the judgment was rendered?

A. For those two years, sir.

Q. You mean to say that the judgment was rendered for interest to June 20, 1863, or up to what date was interest paid in the decree of the Court?

A. December 30, 1872.

Q. How was the interest computed, up to that date?

A. Yes, sir.

Q. What was the total decree of the Court?

A. $17,806.68, less $250 attorney's fees.

By Mr. Holt:

Q. Mr. Hillman, the Court asked you how many years of interest were embraced in the judgment and you answered that the interest had been computed up to in the 70's sometime, although the suit was only brought covering interest for the years 1861 and 1862. Which is it?

A. It was brought for the interest on the dividend bonds which had accrued in 1861 and 1862 and had not been paid.

By The Master:

Q. Did the amount of interest thus overdue for which this suit was brought in the aggregate amount to $17,556?

A. No, sir.

Q. What was the amount of it? In other words, of what is the judgment of $17,556 made up? Of course if that was the amount of the interest due to say June 20, 1863, that is one thing; if on the other hand a certain sum was due on June 20, 1863, or in 1861 or in 1862 and the Court figured interest up to 1872, that is quite a different thing.

A. This was the amount of the judgment including both interest which was due on the dividend bonds and the interest which had accrued on that interest up to the date that the judgment was rendered.

Q. Then you have brought the interest up to 1872 instead of stopping it at June 20, 1863?

A. Yes, sir.

Q. Don't you want to revise that item, that is, if that is the fact?

A. It looks very much like an error of judgment, sir.

Q. An error of computation, it is not a question of judgment, it is simply a question of fact. You are predicating this schedule upon June 20, 1863, and all your computations run up to and stop at that date. Now you have an item here that seems to have been made up of interest that ran up to 1872, nine years longer.

A. If you will allow me, I will have that matter looked up and report within half an hour as to whether I am correct in stating that it is interest up to 1872.

Q. You can have that ready when we come in after the recess at noon or after the short recess which will be taken in a few minutes.

A. My assistant says I am mistaken in making that statement, and I will let him get his figures and bring them down.

By Mr. Holt:

Q. Have you filed a supporting exhibit to this item heretofore?

A. Yes, sir.

Q. How was it designated?

A. Defendant's Exhibit No. 3, 1863, Asset D-6 and C-19, numbered page 35 of the record.

Q. The seventh item is Virginia & Tennessee Railroad Company loan. Please explain that item.

A. It consists of the proportion of interest accruing upon Virginia & Tennessee loan from March 31, 1863, to June 19, 1863.

Q. Was it paid?

A. This amount was afterwards paid on August 15, 1863, anticipating the payment slightly, which was due on September 30, 1863, and was paid in cash to the full amount, $35,000.

Q. That is Virginia & Tennessee Railroad Company loan?

A. Yes, sir.

Q. The item seems to be $15,469.61 on the main exhibit.

A. Yes, sir. I have stated that that was the proportion which had accrued of the $35,000.

Q. I understand it now. Have you filed an exhibit in support of this item?

A. I have, yes, sir.

Q. How has it been numbered?

A. It is Exhibit No. 3, 1863, Asset C-8 and D-7, page 23 in this set of schedules.

Q. Item No. 8 is South Side Railroad Company loan. Please explain this item.

By The Master:

Q. Now, is that the proportion of a previous schedule already filed, the proportion up to June 20, 1863?

A. Yes, sir.

Q. Why can't you in your answer simply say that it is the proper proportion between two dates of item so and so?

A. The schedules, your Honor, have been explained, in so far as they relate to the principal of these loans, of Class C. But they have not been explained at all in so far as they relate to Class D., which is the interest or dividend on those.

The Master: Then that may be stricken out, because there is no occasion for it. I did not know but the connection was such that we might have a concise answer and save any trouble in having a detailed explanation. From now on I am quite likely to leave out what I say in an off-hand manner of this kind, and if anyone has any objection, it may stay in. These suggestions do no go in. I can perhaps help the gentlemen to excise this record somewhat.

By Mr. Holt:

Q. The question is as to item No. 8, South Side Railroad Company loan. Please explain that item.

A. The item on the South Side loan represents the amount of unpaid interest on that loan which had accrued up to June 20, 1863, and is $208,375.69.

By The Master:

Q. Was it afterwards paid?

A. And it was afterwards paid in cash.

Q. When?

Mr. Holt: That is what I was about to ask, your Honor.

A. July 29, 1863, $55,000; August 1, 1863, $63,000; August 8, 1863, $28,000; August 17, 1863, $21,000; September 16, 1863, $28,000; and a payment made on July 6, 1863 of $28,000, again of which interest had accrued up to June 20, 1863, of $12,375.69.

Q. You mean you have apportioned it in reaching your result?

A. Yes, sir.

Q. That is the item of $28,000 is the item as to which you make the apportionment in figuring the interest up to June 20, 1863?

A. Yes, sir. This payment of $28,000 having at this time been anticipated from September back.

Q. It was paid in advance?

A. Yes, sir.

By Mr. Holt:

Q. Have you heretofore filed an exhibit in support of this item?

A. Yes, sir.

Q. How has it been marked?

A. Defendant's Exhibit No. 3, 1863, Assset D-8 and C-9, and being page 25 in this set of schedules.

Q. I notice in this item, Mr. Hillman, that a correction has been made, from five hundred and thirty-seven thousand and some dollars to the amount given by you, two hundred and eight thousand and some dollars.

The Master: Why do you encumber the record with that, Judge?

Mr. Holt: I want to find out.

Q. The question is, have you made the same correction in your underlying exhibit?

Mr. Holt: I do not want them to be in conflict.

The Master: This schedule when it is printed won't show any correction, it will be printed in accorance with your correction.

Mr. Holt: I want to be sure that the underlying one has been corrected.

The Master: If you will excuse me, why don't you ask him if the underlying exhibit is consistent with this.

Mr. Holt: He might not know what I meant by consistency if I did not call his attention to the particular item, is my fear.

The Witness: I might say that it was a clerical error in transcribing from the sub-exhibit to the general exhibit.

Q. Then they are consistent?

A. Yes, sir.

Q. Ninth, Norfolk & Petersburg Railroad Company—

The Master: I would suggest that all be left out, because when you get your print there won't be any correction that will appear on it, and there won't be anything that this inquiry can be predicated upon, and it will result necessarily in confusion —that is, if you have no objection.

Mr. Holt: I think it is a very good suggestion. All I wanted to get was the fact.

The Master: You wanted to know whether your supporting schedule agreed with this.

Mr. Holt: Yes.

The Master: Then that may go out of the record, because there is no occasion for it. The schedules being consistent, we do not want anything in the record about the correction at all. The schedule won't show the correction. If it is out we won't have any confusion.

Mr. Holt: So that all goes out about correction.

The Master: Absolutely.

Q. Item No. 9 is the Norfolk & Petersburg Railroad Company, stock and loan. Please explain it.

A. It consists of two items, a dividend on the stock, which was for the six months January 1, 1863, to July 1, 1863, $2,475. The $2,324.52 being the proportion of that which accrued from January 1, 1863 to June 19, 1863.

By The Master:

Q. To and inclusive of June 19, 1863?

A. Yes, sir.

The Witness: The dividend was paid in cash, as shown on page 149, Journal B., Internal Improvement Fund, State of Virginia.

Q. On what date?

A. I do not know, sir. The date was left out; it was inadvertently omitted here.

Q. Make a note of that and supply it, because they probably will want it. Just say on the blank date and put it in.

A. Very well.

(The witness afterwards supplied the date as September 7, 1863.)

By Mr. Holt:

Q. Is there anything else you want to say? If not I will proceed to the next one.

The Master: You have not examined him as to the loan.

The Witness: The loan consists of four and a half years interest on the $300,000 loan from January 1, 1859, to July 1, 1863, at six per cent., and was paid January 11, 1864, as shown on folio 158, Journal B, Internal Improvement Fund, State of Virginia, $94,500. Apportioning that up to June 20, 1863, gives us $93,866.57.

By The Master:

Q. Well, now, that item was not a payment of loan but was a payment of interest on loan?

A. Yes, sir.

Mr. Holt: The underlying exhibit shows that.

The Master: Put in there "Interest on Loan" and then you will have it right under your eye. Put right ahead in the exhibit the words "Interest on."

The Witness: Would it not be well to put that in the heading of the schedule, as the same remark would apply to all schedules.

The Master: I would rather have it right there on the item, for my information. I know just what it means when it is right there.

Mr. Hogg: You would precede the word "Loan" with "Interest on."

The Master: Yes.

Mr. Lilly: Does your Honor want that before all of these?

The Master: No, I had not noticed the others.

Mr. Lilly: There are three or four other loans set down.

The Master: Then I would say "Interest on Loans" in each case. Precede the word "Loan" all the way through this schedule, if it is a fact—Iwould put in the word "Interest on" and then there cannot be any question.

Mr. Hogg: And as to stock, "Dividend on."

The Master: Yes. The significance of that is that you will get it all from this schedule; otherwise you might have to look through several schedules to find out.

Mr. Holt: He is making the changes on the schedules.

The Master: Do not put this colloquy in the record.

Mr. Holt: I think that makes it absolutely clear, your Honor.

The Master: Then we will have it all in.

Q. Have you heretofore filed a supporting exhibit on this item?

A. Yes, sir, I have.

Q. How has it been marked?

A. Defendant's Exhibit No. 3, 1863, Asset C-10 and D-10 and D-9.

Q. I notice that the tenth item is James River & Kanawha Company with nothing but ciphers set opposite. That means, I suppose, that there was nothing upon the subject of divi-

dends upon stock or interest upon loan to be considered so far as this schedule is concerned?

A. Yes, sir.

Q. No 11, loan to Washington College, $56.35. Explain.

A. It represents the amount of interest on a loan of $2,000 to Washington College from January 1, 1863, to June 20, 1863.

Q. Was it ever paid?

A. Yes, sir.

Q. When?

A. It was paid on August 26, 1863, in full for the six months ending June 30, 1863, $60.

Q. Did you apportion it then so as to arrive at the amount of $56.35?

A. Yes, sir.

Q. Have you filed an exhibit in support of this item?

A. I have.

Q. How has it been marked?

A. Defendant's Exhibit No. 3, 1863, Asset C-15 and D-11, and bears the number, page 31 of this set of schedules.

Q. No. 12, Richmond Academy bonds, $11.26. Explain.

A. This is the amount of interest from January 1, 1863 to June 19, 1863, on the Richmond Academy bonds of $400.

By The Master:

Q. Do you mean interest to June 19th, or to and inclusive?

A. To and inclusive.

Q. Sometimes you tell us interest to June 20, 1863, and then you tell us up to June 19, 1863. I presume you mean exactly the same thing. You will excuse me for the suggestion, but if you will use exactly the same language in each instance you would not give rise to any question as to what you might mean by it. If you will say to and inclusive, that means up to June 20, 1863, and if you say up to June 20, 1863, that is inclusive of the 19th. I notice sometimes you give it one way and sometimes the other, and I was wondering what the occasion for it was.

A. It was just an inadvertence in expressing myself, your Honor. I will say hereafter June 20th.

Q. Make the expression harmonious all the way through.

What you mean now is to and inclusive of June 19th?

A. Yes, sir.

By Mr. Holt:

Q. Have you filed an exhibit in support of this item?

A. Yes, sir.

Q. When was this interest paid?

A. It was afterwards paid, August 26, 1863.

Q. Have you filed an exhibit in support of this item?

A. Yes, sir.

Q. How has it been marked?

A. Defendant's Exhibit No. 3, 1863, Asset C-16 and D-12, and it is numbered page No. 32 of this set of schedules.

Q. No 13, claim against the United States Government, $872,260.07; what is that?

A. It represents the interest which had accrued on the loan to the United States Government of July 1, 1814, from that date up to June 20, 1863.

Q. Have you filed an exhibit in support of this item?

A. Yes, sir, I have.

Q. How has it been marked?

A. Defendant's Exhibit No. 3, 1863, Asset D-13, C-17, and is page 33 of this set of schedules.

Q. Has that interest ever been paid?

A. Yes, sir.

Q. When?

A. It was paid in 1904 as of the date of, however, February 11, 1894.

By The Master:

Q. In full?

A. In full, yes, sir.

Q. Up to 1894?

A. Yes, sir.

Q. That is, interest did not run after 1894?

A. No, sir.

Q. But it was paid in full up to 1894?

A. I would say that this was paid in bonds of the State of Virginia.

Q. Bonds of the State of Virginia?

A. Yes, sir.

Q. By the United States?

A. Yes, sir, with the exception that the United States did send Virginia a check for $5.50 in order to balance it.

By Mr. Holt:

Q. I want to inquire again when this settlement was made—we have had some little discussion here—when this payment of interest was made. I do not know that it is material, but I just want the fact.

A. In 1903, but dated back to February 11, 1894, the actual settlement being in 1903, but the settlement made as of the date of February 11, 1894.

By The Master:

Q. All the computations were made up to February 11, 1894?

A. Yes, sir.

Q. But the papers and adjustment of the claim were not actually delivered by either party until sometime in 1903?

A. They were not delivered until then and the adjustment was not made until that date?

Q. They made a computation as of that date?

A. Yes, sir.

Q. In 1903?

A. Yes, sir.

Mr. Lilly: At the time the respective claims would come nearest balancing.

The Witness: They settling interest on each one, bringing the claim from 1814 up to a point where the claim of the United States Government against the State of Virginia would come nearest to being balanced, and in 1903 they found that that date of nearest balance was February 11, 1894, and which only required then the interchange of securities and $5.50 in cash.

The Master: It must be conceded that they came pretty near the result.

By Mr. Holt:

Q. Item No. 14, Farmers' Bank of Virginia, $4,762.16; what does that represent?

A. It represents the proportion of the dividend on the Farmers' Bank of Virginia which had accrued from June 1, 1863, to June 19, 1863.

Q. You mean to June 19th or to June 20th?

A. To June 20, 1863, which dividend was declared December 1, 1863 and paid in two installments, December 19, 1863, $3,932.43, and December 19, 1863, of $829.73, one payment being made to the Commonwealth Fund and the other to the Literary Fund.

By The Master:

Q. You mean it was paid to the State in those items? Was it semi-annual dividends or annual?

A. Semi-annual dividends.

Q. What was the total semi-annual dividend?

A. $45,780 due to the State.

Q. That is six months?

A. Yes, sir.

Q. That is a little over $7,000 a month, and the proportion that was due on June 20, 1863, was then $4,726.16, that is it, is it?

A. Yes, sir. I quoted it in two payments because it happens to show in the cash book in two separate items on account of the stock being entered up at different times.

Q. Do you mean to say that there is an entry on the cash book showing the receipt by the State of Virginia of the sum of $829.73?

A. Yes, sir.

Q. That precise sum?

A. And also $3,932.43.

Q. And those two specific sums are entered on the cash book?

A. No, sir.

Q. That is what your testimony would show, but I did not suppose that was what you meant. What you mean to say is that there were payments of cash and that the proportion that is to be allotted to this item is as follows, but your statement would show that the cash book would show these very items. It did not seem to me credible that it could, and you do not mean that?

A. No, sir, I do not.

By Mr. Holt:

Q. Explain what you do mean.

A. I mean that the cash book shows that there was a payment of dividends on December 1, 1863, on this bank stock amounting to $45,780 and that the proportion which had accrued on that from June 1 toJu ne 20, 1863, was $4,762.16.

The Master: I understand what you mean, although that is not what you said.

Q. And that was apportioned between two funds, those payments, were they?

A. Yes, sir.

Q. Have you filed an exhibit in support of this item heretofore?

A. No, sir.

Q. Have you prepared such an exhibit?

A. Yes, sir, I have.

Q. What page is it?

A. Page No. 37.

Q. Will you now file as part of your deposition the supporting exhibit referred to and mark the same Defendant's Exhibit No. 4, 1863, Assets D-14 to 19.

The Master: That covers it although it does not show the computation which results in the aggregate of $4,216; but I know how he reaches it.

Mr. Holt: There are several other banks that are also in this exhibit.

A. I file it so marked.

The paper was admitted in evidence and marked Defend-

ant's Exhbit No. 4, 1863, Assets D-14 to 19, September 3, 1914, C. B.

Q. Does the supporting exhibit just now filed indicate upon its face the sources of information from which the exhibit was made up?

A. Yes, sir, it does.

Q. Does it truly represent the records from which it is taken?

A. Yes, sir.

Q. The 15th item is Bank of Virginia, $36,189.14. What does that mean?

A. It means that the proportion of the dividend declared on that bank stock on July 1, 1863, amounted to this sum for the date January 1, 1863, to June 20, 1863.

Q. Should you not say for the period from January 1, 1863, to June 20, 1863?

A. Yes, sir.

Q. Instead of the date?

A. Yes, sir.

Q. Was that amount ever paid, and if so when?

A. Yes, sir, it was paid in three separate payments.

Q. Give them, please.

A. July 25, 1863, $29,382.50, of which the June 20th proportion was $27,596.76; on June 20, 1863, there was paid $7,423.50 which has—

Q. Well, was there an apportionment to be made of that?

A. I will have to look up that date. I have sent a man downstairs to look it up.

The Master: Well, while we are waiting I will ask a question.

By The Master:

Q. As I understand it you are now testifying about the dividend which was due and payable July 1, 1863.

A. Yes, sir.

Q. And were there payments made on account of this dividend prior to July 1, 1863?

A. Yes, sir.

Q. Then they were in anticipation of its coming due?

A. Yes, sir.

Q. How did that happen? Did you see anything on the books which indicated why they should advance to the State, in advance of having declared a dividend?

A. That was sometimes done. But, your Honor, I find that opposite this entry which was paid in advance, they have got a date that this dividend was due in June instead of July, and that was the reason I have sent my man downstairs to verify that item and see how that came about.

Q. You say it not infrequently appears that some of these corporations anticipated the payment of the dividends by payments to the State?

A. Yes, sir.

The Master: That fact had not appeared before, and that is the reason why I was inquiring about that.

The Witness: I spoke of it a moment or two ago on one of these loans, they paid $28,000 that was not due at the time.

The Master: But in connection with dividends the statement had not been made before. I can understand how it might be done, but my attention had not been called to it before, and I wanted to be sure I was right about it.

Mr. Holt: The stockholders were all hard up, I suppose.

The Master: The State, among others.

Mr. Holt: Yes.

The Master: Well, I do not suppose that is really a novel condition as to stockholders.

Mr. Holt: No.

Q. Have you got the information now?

A. Yes, sir.

By Mr. Holt:

Q. Proceed, Mr. Hillman, please.

A. Referring to the matter of the payment of those dividends, I would say that the payment of June 20, 1863, was made to the Literary Fund, $7,423.50, and it is described on the Literary Fund cash book as being on account of the dividend

due June, 1863, on 2,121 shares of stock. Being June, 1863, according to the entry in the books, we have taken it that the entire amount accrued on this date.

By The Master:

Q. When were the other payments made aggregating the whole amount of the dividend due July 1, 1863?

A. On December 29, 1863, there was paid a dividend on the stock marked as due December 1, 1863, again to the Literary Fund, of $11,135.25, of which the proportion from June 1, 1863, to June 20, 1863, was $1,168.88. The sum of these three items I have mentioned—

Q. Does that sum appear as a dividend due in December, 1863?

A. Due in December, 1863.

Q. When was the balance on the dividend that was due on July 1, 1863, paid? This last relates to another dividend does it not?

A. Yes, sir.

Q. The dividend you are trying to account for is the dividend due July 1, 1863.

A. Your Honor, I was misled by the fact that there are two dividend dates mentioned here, which is so unusual that I simply jumped to the conclusion that it was July 1st. There are two dividend dates here. The dividend due July 1, 1863, was paid July 25, 1863, and amounted to $29,382.50, of which the proportion accruing up to June 20, 1863, was $27,596.76. That ends the July dividend.

Q. Now what was the total dividend July 1, 1863, that you predicate your computation from January 1, 1863, to June 20, 1863, upon?

A. $29,382.50.

Q. You mean that that was the total dividend that was due on that stock on July 20, 1863, for the period beginning January 1, 1863, and ending July 1, 1863?

A. Yes, sir.

Q. What significance has the entry that you have been testifying about, predicated upon an entry of July 20, 1863? If the dividend was all paid before that, that exhausts the sub-

ject, does it not?

A. No, sir, for the reason that there was a dividend due in June, 1863, which was not taken into account.

Q. Do you mean that there were two dividends on this stock, one due in June, 1863, and one due on July 1, 1863?

A. According to their books, yes, sir. That seems a little unreasonable.

Q. Is not that a little incongruous?

A. Yes, sir.

By Mr. Holt:

Q. The record so shows, does it not, Mr. Hillman?

A. Yes, sir.

The Master: There ought to be some way of finding out just what the dividend was on July 1, 1863.

Mr. Holt: I will make this suggestion, your Honor, if I may be allowed. He has now explained the payments of one dividend. Now let him explain the payments of the other dividends.

The Master: I want to know what I have got to take into account as the actual dividend at either July 1, 1863, or June 1, 1863, and the amount that this account is entitled to on a pro rata basis. I do not want to have to settle in my mind whether there is a confusion between July 1, 1863, and June 1, 1863, or whether there were two dividends. I want to know whether this accountant can tell me what the actual dividend was on July 1, 1863. And if he has got that amount that he is satisfied about, and if that eliminates June 1, 1863, I do not care, I want it eliminated. What I want to know is what the real dividend was on July 1, 1863, if Mr. Hillman can tell me from an examination of these books, and then I want the proportion that accrued up to June 20, 1863. Do I make that clear?

The Witness: Yes, sir.

The Master: What I want to know is whether you can take the books and tell me what that actual dividend was, no matter what these entries show; and whether the dividend has actually been paid. Then I want the proportion of that actual dividend up to June 20, 1863. While I am somewhat interested in this

confusion of the books, I do not want to have to settle that confusion myself, I want Mr. Hillman's solution of it. Do I make that clear?

The Witness: Yes, sir.

The Master: Give me that information.

The Witness: Of course you do not mean this moment.

The Master: No, but make it as a part of your testimony. If you want to suspend here, you can make that answer when we come in after recess. If I have not made that clear I want to make it clear.

The Witness: I understand you perfectly.

The Master: I want the judgment of the witness as to what the fact actually is and what you are prepared to stand by. Then if they criticise it I will judge of the weight of the criticism. This colloquy you can leave in.

By Mr. Holt:

Q. Have you filed heretofore an exhibit in support of this item?

A. Yes, sir.

Q. How has it been marked?

A. Defendant's Exhibit No. 4, 1863, Assets D-14 to 19, and is numbered page 37.

Q. That then was the supporting exhibit filed this morning?

A. Yes, sir.

Q. No. 16, Bank of the Valley, $23,848.83.

A. This consists of the dividends declared by this bank on June 1, 1863, and July 1, 1863, June 1, 1863, being taken in total as due, and the July 1, 1863, being taken and apportioned upon the time pro rate from January 1, to June 20, 1863.

By The Master:

Q. What was the amount of those two dividends respectively?

A. The dividend due June 1, 1863, was $18,500; the dividend due July 1, 1863, was $5,695.

Q. Is that the total dividend or the amount that is to be apportioned to this item?

A. That is the total dividend paid on stock owned by Virginia. The amounts apportioned are $18,500, being the June item in full.

Q. 20-30ths of the $5,000, roughly speaking?

A. Yes, sir. Again, your Honor, I will look this matter up in connection with the other, as there seem to be two dividend dates stated on Virginia's books for this stock.

Q. See if you can give any explanation of it.

A. Yes, sir.

By Mr. Holt:

Q. Have you filed an exhibit heretofore in support of this item?

A. Yes, sir.

Q. How has it been designated?

A. Defendant's Exhibit No. 4, 1863, Assets D-14 to 19, and numbered page 37.

Mr. Harrison: You did not state when those payments were made.

Mr. Holt: I will inquire about that.

Q. Were these dividends paid, Mr. Hillman?

A. Yes, sir.

Q. When?

A. August 1, 1863.

Q. Both of them?

A. Yes, sir.

By The Master:

Q. Paid in one item, in one sum, that is, were the two added together and all paid in one sum on August 1, 1863?

A. No, sir. They were paid to the different Boards, one paid to the Commonwealth—

Mr. Holt: You do not mean Boards; you mean Funds.

A. Funds, one paid to the Commonwealth Fund and one paid to the Internal Improvement Fund, and the other paid to the Literary Fund.

Q. How does that appear on the books of the State, does an entry like that show in the first place that an aggregate

amount of cash was received and that then subsequently it was distributed among these various State Funds?

A. No, sir.

Q. Or does it show, does the cash book show the receipt of the particular items that went to the particular funds?

A. The cash book shows the receipt of the particular items to the particular funds.

Mr. Lilly: Each fund had an interest in the stock.

The Master: Yes, sir. The stock had been distributed to these various funds.

Mr. Holt: Each fund received its proportion of the stock and received its dividends.

The Witness: All of this appears on the different cash books.

The Master: I understand it. For the time being it escaped my recollection that the various funds had moneys invested in this stock. Of course that furnishes an adequate reason for the payment of the dividends.

Mr. Anderson: I did not get the date on which this $23,840 had been paid.

The Witness: It is all shown on page 37.

By Mr. Holt:

Q. No. 17, Exchange Bank, $8,304.02. Give us briefly the history of this item.

A. Exchange Bank of Virginia shows a dividend accrued December 1, 1863, of $67,904 on the stock owned by the Commonwealth Fund, of which the proportion from June 1, 1863, to June 20, 1863, would be $7,050.14. It shows also a dividend due July 1, 1863, on stock held by the Internal Improvement Fund of $1,335, of which the proportion from January 1, 1863, to June 20, 1863, would be $1,253.88. Again there seems to be a discrepancy which will be looked up as to dates of dividends as requested by your Honor.

Q. Do these two amounts so apportioned aggregate the $8,304.02?

A. Yes, sir, they do.

Q. Were those dividends paid, and if so when?

A. The one from which was received $7,050.14, that is the dividend of December 1, 1863, was paid January 13, 1864.

By The Master:

Q. When did that dividend accrue?

A. December 1, 1863.

By Mr. Holt:

Q. When was the other one paid?

A. July 10, 1863.

Q. Have you filed an exhibit in support of this item?

A. Yes, sir.

Q. How has it been marked?

A. Defendant's Exhibit No. 4, 1863, Assets D-14 to 19, and is numbered page No. 37 in this set of schedules.

Q. I notice that the eighteenth item on this main exhibit is Northwestern Bank 00. I suppose that means that there were no dividends upon the stock held by the Commonwealth of Virginia in that company with which this schedule has to do, is that so?

A. Yes, sir.

Q. Is the same true of the nineteenth item, Fairmount Bank, 00?

A. Yes, sir.

By The Master:

Q. Before you come to that, I would like to make an inquiry about the Exchange Bank. As I understand it, the stock upon which these dividends were predicated was held by two funds, one fund, that is the Commonwealth Fund, was it, held how many shares?

A. 8,488 shares.

Q. That is the Commonwealth Fund?

A. Yes, sir.

Q. There is another fund held how many shares?

A. 267 shares.

By Mr. Holt:

Q. What fund was that, Mr. Hillman?

A. Internal Improvement Fund.

Q. Was there any dividend declared on the Commonwealth stock on July 1, 1863, or was there a dividend only on the stock held by the Internal Improvement Fund declared July 1, 1863, so far as the books show? There seem to be two dividends.

A. On the Internal Improvement only, as far as the books show.

Q. Then there was a dividend declared upon the stock held by the Commonwealth Fund, December 1, 1863?

A. Yes, sir.

Q. But none appears to have been declared upon the same stock held by the Internal Improvement Fund on December 1, 1863, is that it?

A. Yes, sir.

Q. I wish you would look that up and see if there is any explanation. It seems unexplainable.

A. I will look it up.

By Mr. Holt:

Q. See if you can discover anything on the books to explain that apparent incongruity.

A. I will find it.

By Mr. Holt:

Q. I now come to the twentieth and last item, No. 4, Blue Ridge Railroad Company, tolls for use, $5,833.81. Please explain that.

A. For the tolls for the use of the Blue Ridge Railroad Company, which were paid by the Virginia Central.

Q. Virginia Central what?

A. Virginia Central Railroad. There had accrued for the quarter ending July 1, 1863, $6,576.50. The proportion of that on the time pro rate from January 1, 1863, to June 20, 1863, was $5,853.81, which is the amount on Defendant's Exhibit No. 4, 1863.

Q. What do you mean by tolls paid by the Virginia Central Railway Company to the Commonwealth of Virginia on account of the Blue Ridge?

A. They used the Blue Ridge Railroad and tunnel and paid them tolls on passengers and freight.

Q. You mean that the Virginia Central used it and paid the Commonwealth of Virginia tolls therefor?

A. Yes, sir.

Q. Have you filed heretofore a supporting exhibit on this item?

A. Yes, sir.

Q. How has it been marked?

A. Defendant's Exhibit No. 3, 1863, Asset C-5 and D-20, page No. 20, of this set of schedules.

Mr. Harrison: He has not stated when they were paid.

The Witness: They were paid on March 2, 1864. I call attention to a note on this exhibit which has just been quoted, on the supporting exhibit, that subsequently there was received from the Virginia Central the following amount in tolls which may or may not be considered as part of the purchase price, March 21, 1864, cash book No. 10, Board of Public Works, $64,984.49. They were allowed to expend that amount of tolls on the road instead of paying it to Virginia.

By The Master:

Q. Was that taken into account in your computation?

A. No, sir, I have not taken it into account anywhere. I have simply made a note of it.

By Mr. Holt:

Q. Returning now for a moment, Mr. Hillman, to the sixth item, there was an item of $17,556. 68, covered by a judgment, which I wish you would please explain.

The Master: That involves that question of interest.

Q. Are you ready now to explain it?

A. Yes, sir. This judgment was rendered for the amount of the interest which had fallen due upon the dividend bonds in 1861, and 1862, and which had not been paid.

By The Master:

Q. Aggregating how much?

A. Aggregating $17,806.68, from which was deducted, as

we have stated, attorney's fees of $250, leaving the net sum $17,556.68.

The Master: That shows that interest was not computed on those sums up to the date of judgment.

Mr. Holt: He is reading from a copy of an order paying those attorney's fees.

The Master: The question in doubt before us was whether the judgment included interest up to the date the judgment was rendered, or whether it was predicated upon the principal sum due without interest from the dates when they were due. This shows that it is predicated upon the principal sums due without interest. That is the effect of it.

Mr. Holt: Yes, sir.

The Master: That makes that certain. That was an element of uncertainty before.

Mr. Holt: That, your Honor, brings us to something that we can go on with more rapidly after lunch.

The Master: Then you would like to suspend here?

Mr. Holt: Yes.

The Master: Then we will suspend here until half past two.

At this point a recess was taken until 2:30 P. M.

AFTER RECESS.

Continuation of the direct-examination of

CONWAY W. HILLMAN.

The Witness: I have found that the dates of those dividends are December and June.

By Mr. Lilly:

Q. The bank dividends?

A. The bank dividends, for all of the banks in controversy, regardless of the entries which have been made upon the books of the State of Virginia in regard to the date upon which these dividends accrued.

By The Master:

Q. So that the date of July 1st, is an error ?

A. It is an error and will be corrected. Do you wish me to state now, why I came to that conclusion.

The Master: No I do not care for that unless Mr. Harrison would like to have it.

Mr. Harrison: He had better state it.

The Master: Very well then, give your reasons.

The Witness: The State of Virginia put a tax upon bank dividends declared by all banks within the State, and headed it "bonus on bank dividends" although it was a tax upon those dividends. And referring to the entries on their books wherein those bonuses were collected from the banks, it shows that in each case of these banks in which the State owned stock, that the dates were December and June, and not July and January. We will have the exhibit re-made on that basis, if your Honor so wishes, or an extra one put in .

The Master: So far as I am concerned that is adequate.

The Witness: Shall we have an extra sheet put in showing how the books follow?

The Master: Just as you like about that.

Mr. Lilly: It will not affect the amount?

The Witness: Yes, sir, it will affect the amount.

Q. Does it lead to a re-adjustment of the computation?

A. Yes, sir.

Q. Then why don't you make a re-adjustment of your computation and put upon it the proper schedules, and notify the other side, so that the schedules as printed will be upon the re-adjustment on the information you have obtained? I would not put an additional schedule in for the purpose of carrying out those details, but make the changes in the schedules to carry out the explanation you have now made, and your explanation of the situation covers the matter, as far as I am concerned. Unless counsel on either side desires a detailed statement that will be sufficient.

A. Very well.

Mr. Holt: That will be satisfactory to us.

The Master: How about the other side?

Mr. Harrison: I think that is sufficient.

The Master: When you make the change put it on the official schedule—put it on the schedules that the Virginia people have so that they will be kept in touch with the matter.

Mr. Holt: The witness says he will simply correct those schedules. There are only one or two items.

The Master: Very good; and make the same correction upon the schedules which have been handed to counsel for Virginia so that they will be in touch with the change.

By Mr. Holt:

Q. We come now, Mr. Hillman, to the exhibits or schedules for 1863 covering Class E, being the various bank stocks. Have you made a search of the books and records of the State of Virginia as well as in the Congressional Library at Washington for the purpose of ascertaining the statements of the Farmers' Bank of Virginia for the years 1862 and 1863?

A. Yes, sir, I have.

Q. With what result?

A. That we were unable to find any statement of the banks for those dates.

Q. Then page No. 38 as I understand it, being the schedule for 1863, concerning the Farmers' Bank of Virginia, is nothing more than a copy of the corresponding exhibit with relation to that bank for the year 1861 with the note found thereon at the bottom; is that so?

A. Yes, sir.

Q. Please read that note at this point.

A. Diligent search was made for statements of this bank, covering the years 1862 and 1863 in the War Department and Congressional Library in Washington, D. C., and in the records of the State of Virginia, without result. The fact that this bank declared dividends in 1863 even greater than in 1861 would tend to indicate that the bank stock was at least of equal value in 1863 as in 1861.

The Master: Right at this point, did the law at that time

require the publication of the returns of banks in any newspaper? In a great many of our states the law requires a return of that sort to be published, which is practically the sort of return that you have included in more or less all of these schedules.

Mr. Holt: We have an act of the Legislature of Virginia here directly, your Honor, that may answer your question. I have not looked at it recently, but I think it provides how these banks should keep their books and what returns they should make. I do not know whether it covers the question of publication or not.

The Master: Of course in these days nearly every state, at least every state that I am familiar with, requires statements to be published.

Mr. Holt: Yes.

The Master: And at the proper period of the year you will find your newspapers full of those statements.

Mr. Holt: That is true.

The Master: My inquiry is whether that was the fact during this period, and if so whether any investigation of the files of the newspapers has been made for the purpose of getting the information. I do not know what the fact is. My impression is that in connection with the other hearing I found something of that sort, that is in connection with my own investigation. I am not quite certain, however. I do not know whether it was on this line, but I got some information.

By Mr. Holt:

Q. Have you examined any newspapers, Mr. Hillman, for the purpose of ascertaining whether or not the banks published their statements under the laws of Virginia during the year 1863?

A. I have not, no, sir.

Mr. Holt: We will look into that, your Honor, and see. I do not know what the law of Virginia was myself.

The Master: I do not know either, except that I do know that that is a very general custom now.

Mr. Hogg: The two banks that were before us on the

former hearing were the Northwestern Bank at Wheeling and the Fairmount Bank.

The Master: I do not think there was anything of that sort in connection with the former hearing.

Mr. Holt: I would like to ask the gentlemen on the opposite side of the table whether or not the laws of Virginia in 1863 required banks to publish their annual statements in the newspapers.

Mr. Anderson: I do not remember whether it did or not, but I have seen them published frequently.

Mr. Holt: We require those publications in our state now, but whether or not Virginia did in 1863 I do not know.

Mr. Anderson: I do not know whether it was done in 1863.

The Master: That is a matter that can be investigated, and if there is any information of value to be obtained from that source, of course we can have it without any trouble.

Q. You say that you examined the records of the War Department and Congressional Library at Washington upon this subject for those years. Why did you examine the records of the War Department and of the United States Government?

A. Because, as has been stated here, the records of the State of Virginia were attempted to be moved from Richmond over to Petersburg, I believe.

Q. Lynchburg.

A. Lynchburg—during the war—or at the close of the war, and they had only proceeded part of the way when their journey was interrupted, and the records were seized by the Federal troops, and were taken by them, at least in part, to Washington, and that some of those records are still on file in the War Department. And therefore we examined the records as far as we could get at them in the War Department, as well as going to the Congressional Library to see if any of the books had been preserved there.

Q. And examined the records of Virginia here at Richmond in addition thereto?

A. Yes, sir.

Q. With the result that you have stated?

A. Yes, sir.

Q. We will now ask you to file the exhibit referred to and mark it Defendant's Exhibit No. 5, 1863.

A. I file it herewith, so marked, being page No. 38.

The paper was admitted in evidence and marked Defendant's Exhibit No. 5, 1863, September 3, 1914, C. B.

Q. The exhibit you have just filed consists of how many sheets?

A. Do you mean for the whole class.

Q. Just covering the banks in Class E.

A. Six sheets.

Q. And these six sheets cover what banks? Give me the names of each of them.

A. Farmers' Bank of Virginia, Bank of Virginia, Bank of the Valley, Exchange Bank of Virginia, Northwestern Bank, and Fairmount Bank.

Q. These sheets of Exhibit No. 5, as I understand it, correspond exactly with the sheets in the schedules for 1861, except that there is a note on the bottom of each which you read a moment ago?

A. Yes, sir.

By The Master:

Q. That note explains how it is, although there was some lapse of time, that this is a duplicate of the other? That is to say, you have not been able to get any original information that enables you to make any change?

A. Yes.

By Mr. Holt:

Q. Then the only difference in the sheets for 1861 and for 1863, if any there be, is in the caption? Is there a difference in the caption?

A. There is, yes, sir; the caption being in this instance, statement showing ownership of stocks in various banks by the Commonwealth of Virginia, June 20, 1863, and the value of the same as shown by the banks' statements of January 1, 1861.

The Master: And as to these items you rest your case upon the same evidence as was submitted as to January 1, 1861, as to the reasons you have given.

Mr. Holt: Yes, sir.

The Master: In other words you have exhausted all the sources of information that were open to you.

Mr. Holt: And the only point being that in 1863 they were declaring bigger dividends than in 1861. Of course that is embraced in the note and shown by the dividends that are set down in the sheet.

The Master: Yes. All those facts appear on the original exhibit.

Mr. Holt: Yes, sir.

The Master: Or original exhibits. Now, whether any information is obtainable from the newspapers during that period, that is a matter that remains to be investigated.

Mr. Lilly: We will pursue that.

Mr. Holt: We have been ransacking the newspapers on other matters, and we will try and see what they furnish on this matter.

Q. You may state whether or not as appears by these bank exhibits for 1863, the Commonwealth of Virginia owned the same number of shares of stock in these banks on June 20, 1863, that she owned therein on January 1, 1861.

A. Yes, sir, she owned the same amount.

Q. Class F, in the exhibits to the supplemental answer, showing the sale of various stocks and loans by the State of Virginia to the Atlantic, Mississippi & Ohio Railroad; you may state whether or not you have examined the books, records and public documents of the Commonwealth of Virginia with a view of ascertaining what stocks embraced in this class if any were sold by the Commonwealth of Virginia to the Atlantic, Mississippi & Ohio Railroad Company and the amount received thereon or to be received thereon and the security taken therefor if any.

A. Yes, sir, I have.

Q. Have you prepared an exhibit showing the result of your examination and the figures taken from these records of Virginia?

A. Yes, sir.

Q. Will you file the same as a part of your evidence, marking it Defendant's Exhibit No. 6, 1863.

A. I file it so marked, being also numbered page 44.

The paper was admitted in evidence and marked Defendant's Exhibit No. 6, 1863, September 2, 1914, C. B.

Q. Does the exhibit just filed by you show the documentary or record sources upon which it was made up?

A. Yes, sir, it does.

Q. Is this exhibit accurate and does it truly represent the documents examined by you and noted on its face?

A. Yes, sir. I would like to add to that statement the foot note which will be found on this page 44 that the records of the Atlantic, Mississippi & Ohio Railroad, their first trial balance sheets, have also been examined in order to determine whether or not this $4,000,000 was outstanding at that time, and I have so found.

By The Master:

Q. At what time?

A. At the time that the books of the Atlantic, Mississippi & Ohio were opened, the first trial balance.

Q. What date was that?

A. On September 30, 1871.

Q. What was the outcome of this $4,000,000 mortgage, was it ever paid or whatever happened to it?

A. The railroad went into the hands of a receiver and was foreclosed and the State finally accepted $500,000 in lieu of its mortgage.

Q. Was that $500,000 in cash or bonds?

A. Cash.

Q. What date was that?

A. The date was————.

Q. Do you know what the amount of the first or underlying mortgage was? You need not bother now if it is any trouble.

Mr. Holt: I thought perhaps we could develop that history through the exhibit your Honor.

The Master. Very likely.

Mr. Holt. The history of it is simply this, if I may be permitted to state it. In the first place they sold all these odds and ends to the A. M. & O. Railroad for the sum of four millions of dollars, and took a second mortgage on the property of the vendee of the stocks. And a little later the A. M. & O. got into trouble and a foreclosure suit took place under its first mortgage, and the proceeds of the sale never reached the second mortgage. But afterwards, when the road was reorganized, in order to get rid of any equitable claim that Virginia might have, they came in and offered her a half a million, and she accepted it. That is now the Norfolk & Western Railroad Company.

The Witness: Your Honor, you asked a question a moment ago—

The Master: I am inclined to think that those facts had better appear.

Mr. Holt: We have a contract that we will exhibit directly that will show that.

The Witness: You asked what were the first mortgage bonds which preceded or had precedence of this second mortgage. They amounted, on September 30, 1891, to $5,493,008.11. That is shown by the trial balance September 30, 1871 of the A. M. & O.

Mr. Holt: It was a reorganization, it changed its name, and I do not know how far it was identified with the old one.

The Master: Does the date of the foreclosure appear in the record? Or will that appear in your Exhibit?

Mr.Holt: I think, your Honor, that we will be able to show directly a contract between the Norfolk & Western, or its then President, Mr. Kimball, and the State of Virginia, with the recitals that give all the facts that you inquired of, at the time the half million was paid. We have that paper somewhere. I haven't seen it.

The Master: That will give the history of the whole transaction?

Mr. Holt: Yes, but that will be introduced independently of this exhibit of course.

By Mr. Holt:

Q. I wish you would explain briefly, Mr. Hillman, and in your own way, this Defendant's Exhibit No 6, 1863.

Mr. Holt: I think that will be the briefest way to do it, your Honor.

The Master: Is this the one relating to the $4,000,000 loan?

Mr. Holt: Yes, sir, page No. 44.

The Master: Yes, I have it.

A. On pages 178 and 179, Journal 9, Internal Improvement Fund of the State of Virginia, it is shown that the following stocks of the face value or cost value, as shown, were transferred to the Atlantic, Mississippi & Ohio Railroad Company for $4,000,000 second mortgage bonds; first, 8,175 shares of the Norfolk & Petersburg Railroad Company stock of the cost value and a par value of $817,500; second, 825 shares of the Norfolk & Petersburg guaranteed stock, face value and par value of $82,500; third, 3,000 shares of the Norfolk & Petersburg preferred stock of the face value and the par value of $300,000; fourth, 8,035 shares of the South Side Railroad Company, par value and face value of $803,500; fifth, 17,168 shares of the Virginia & Tennessee Railroad, par value and face value of $1,716,800.

Q. Is there any difference between par value and face value?

A. Yes, sir, by face value I attempted to convey the amount at which it was carried upon the books of the State of Virginia.

Q. Very well, go ahead.

A. Perhaps that is not a very felicitous term.

Q. Well, the two are the same in this instance anyhow?

A. Yes, sir.

Q. Very well.

A. Sixth, 832 shares of the guaranteed stock of the Virginia & Tennessee Railroad, face value and par value $83,200. Seventh, 5,000 shares of the Virginia & Tennessee preferred stock, face value and par value $500,000. Eighth, 1,034 shares of the Virginia & Kentucky Railroad, face value and par value $103,400. Also bonds and notes as follows: First, note of the Norfolk & Petersburg Railroad Company for interest due and

unpaid on loan of $300,000, $13,271.41. Second, note of the Norfolk & Petersburg Railroad for interest accrued and unpaid on July 1, 1870, on 825 shares of guaranteed stock, $27,225. Third, unpaid balance of the principal of the $300,000 loan, $163,000. Fourth, all the claims the State may have against the South Side Railroad on account of the principal and interest due upon the loan of $800,000; no monetary value attached.

By The Master:

Q. Was that the value of loan when due?

A. Yes, sir.

Q. So that if that had been carried out in the column it would be $800,000, giving the nominal value?

A. Yes, sir; but on the Journal entry there was no value carried out.

Q. And for that reason you don't put any value on it?

A. Yes, or do not carry it out.

Q. If you were to treat it as you treated the other items you would carry $800,000 out?

A. Yes, sir. Fifth, registered certificates of the Virginia & Tennessee Company, being for interest unpaid on 832 shares of the Virginia & Tennessee guaranteed stock up to July 1, 1870, $79,040. Sixth, all claims, rights and privileges which belong to the State of Virginia on account of a loan of $1,000,000.

Q. Was that full amount due at that time on the $1,000,000?

A. Yes, sir.

Q. And if they were treated like the other items you would simply carry that out in the column to increase the aggregate by a million?

A. Yes, sir. For all of the above there is charged against the Atlantic, Mississippi & Ohio Railroad $4,000,000. That the above was a second mortgage for this amount and not a charge against the road is evidenced by the above pages in the preamble to the entry and by the first general balance sheet of the Atlantic, Mississippi & Ohio Railroad Company, September 30, 1871, on file in the Comptroller's office of the Norfolk &

Western Railroad Company at Roanoke, Virginia, and examined by Mr. Parsons of my force, wherein the item, second mortgage to the State of Virginia, $4,000,000, is shown in the road's liabilities.

Q. Is this item of $163,000, item No. 3, under the heading of bonds and notes, is that the item that we were discussing this forenoon as included in this aggregate of $4,000,000.? We had an item this forenoon which was said to make up part of this $4,000,000 transaction. Is that the item? My memory is that it is, but I wanted to be sure about that.

A. Yes, sir, except the discussion was yesterday instead of this morning.

By Mr. Holt:

Q. The books of these roads, namely, the Norfolk & Petersburg, South Side, Virginia & Tennessee, and Virginia & Kentucky, are now in the possession as I understand of the Norfolk & Western Railway Company at Roanoke, Virginia?

A. Yes, sir, they are.

Q. Did you examine, or cause them to be examined in making up this exhibit?

A. I did, yes, sir.

Q. The Norfolk & Western then I suppose was the successor to the Atlantic, Mississippi & Ohio Railroad, was it?

A. Yes, sir.

Q. And in that way got possession of the Atlantic, Mississippi & Ohio books?

A. Yes, sir. They have not a perfect file, but they have files which fortunately cover the matters which we have in hand.

Mr. Holt: I have found the matter of the $500 payment, and the contract mentioned a moment ago, actually embodied in an Act of the Legislature of Virginia. And I presume that as a supplement to this exhibit, Defendant's Exhibit No. 6, 1863, it should be offered in evidence at this point.

The Master: Yes, I think so, because it is cognate matter, and we should get the material all together.

Mr. Holt: We offer a copy—

The Master: Does it include other material?

Mr. Holt: No, sir, it just recites and embodies this contract and ratifies it.

The Master: Is it several pages?

Mr. Holt: I can read it.

The Master: No, I do not think there is any occasion for that. Do you need the whole of it?

Mr. Holt: Yes, sir, we need the whole of it. It is two pages and a half. We offer as a supplement to Defendant's Exhibit No. 6, 1863, a copy of an Act of the General Assembly of the State of Virginia, entitled an Act ratifying the sale by the board of Public Works of the claim of the State against the Atlantic, Mississippi & Ohio Railroad, approved February 9, 1882.

Mr. Harrison: What is the reference to that Act, Judge?

Mr. Holt: Acts of the General Assembly of Virginia, 1881-82.

The Master: What is the volume and page?

Mr. Holt: There is only one volume, on pages 76-8. They are bound in separate session acts.

The Master: You do not need to read it. The record shows that you have put it in.

The paper was admitted in evidence and marked supplement to Defendant's Exhibit No. 6, 1863, September 3, 1914, C. B.

Mr. Holt: This morning you asked, as I recall, Mr. Master, for the original entry showing this four million dollar transaction.

The Master: Yes, there were two entries.

Mr. Holt: The A. M. & O. road.

The Master: Yes, that is right.

Mr. Holt: Mr. Hillman has produced them here in full from the records, and I do not know that anybody wants to hear them read. One of them is quite lengthy.

The Master: Just insert them in the transcript at the place in his testimony where he would have introduced them.

Mr. Lilly: It comes in very well now. We are just finishing the A. M. & O.

The Master: Well put them in right here.

Mr. Holt: After this Act, I will introduce them in some way.

The Master: That is right.

Mr. Holt: This morning the Master asked the witness to embody in the record the original journal entries covering the disposition of the securities for four millions of dollars to the A. M. & O. Railway Company, and in response to that request we now file two papers, being copies of the entries on said journals and mark the first Defendant's Exhibit No. 6, 1863, B., and the second Defendant's Exhibit No. 6, 1863, C.

The papers were admitted in evidence and marked Defendant's Exhibit No. 6, 1863, B, and Defendant's Exhibit No. 6, 1863, C, respectively, September 3, 1914, C. B.

Defendant's Exhibit No. 6, 1863, B, is as follows:

Journal "D," page 176, Internal Improvement Fund:

"241 Loan to Norfolk & Petersburg Railroad
182 To Norfolk & Petersburg Railroad Company Stock
For this amount improperly charged to latter..$300,000."

Defendant's Exhibit No. 6, 1863, C, is as follows:

Journal "D," page 178, Internal Improvement Fund:

December 22, 1870.

"284 Atlantic Mississippi & Ohio Rail Road Co.:

175 To Stocks & Loans & made to Int. Impt. Co. (that have been sold, &c.")

"Whereas by the terms of an act June 17, 1870, entitled 'An Act to authorize the formation of the Atlantic Mississippi and Ohio R. Road Company, the B. P. W. is empowered and directed to sell and transfer to the A. M. & O. R. R. Co. all of the stock held by the State in the Norfolk and Petersburg. in the South Side, in the Virginia and Tennessee, and in the Virginia and Kentucky Rail Road Companies, for and in consideration that the Commonwealth of Virginia is absolved from all and whatever liability by reason of her unsatisfied subscription to the Va. & Ky. R. R. Co. It is expressly stipulated by the terms of said Act that the payment of $4,000,000 shall be secured by a second mortgage upon the property of the said Atlantic Miss. & Ohio Rail Road Co. In accordance therewith the Board Public Works have this day, sold, & delivered over to the said A. M. & O. R. R. the following property:

I. Stock certificate No. 39 Norfolk & Petersburg Rail Road Company for 8175 shares of ordinary stock	817,500	
II. Stock Certif. No. 40 of same, for 825 shares of stock guaranteed to pay 6 per cent. annually....	82,500	
III. Stock Certif. No. 41 of ditto, for 3000 shares of stock preferred to pay (7 per cent) annually...	300,000	
		1200,000
IV. Stock Certif. No. 881 of the South Side Rail Road Co. for 8035 shares of ordinary stock.....		803,500
V. Stock Certif. No. 1770 of Va. & Tenn. R. R. Co. for 17,168 shares of ordinary stock	$ 1,716,800	
VI. Stock Certif. No. 1771 of the Va. & Tenn. R. R. Co. for 832 shares of guaranteed stock	83,200	

VII. Stock Certif. No. 1772 of same for 5000 shares of preferred stock	500,000	
		2300,000
VIII. Stock Certif. No. 1 Va. & Ky. R. R. Co. for 1034 shares.....		103,400
Also the following claims against the aforesaid companies:		
11. The note of the Norfolk and Petersburg Rail Road Co., the.. same being for interest due and remaining unpaid as of the 1st July, 1870, upon the loan of 300,000 dollars		13,271.41
I. The note of the same, being for interest accrued and remaining unpaid as of the 1st July, 1870, on the 825 shares of guaranteed stock		27,225
III. The amount remaining to be due of the $300,000 loan to Norfolk & Petersburg Rail Road and unredeemed		163,000
IV. All the claim which the State may have against the South Side Rail Road Co. on account of principal & interest due upon the loan of $800,000 made in 1853 to said company.....		
V. Registered certificate of the Virginia and Tennessee Rail Road Co., the same being for interest accrued upon the 832 shares of guaranteed stock as of July 1, 1870, held by the State in said company.....		$ 79,040

VI. All claims, rights & privileges which belong to the State of Virginia on account of the loan of 1,000,000 dollars made to said company under an Act February 9, 1853, &c.
For the above considerations the former account is chargeable to the latter account..... $4,000,000"

See Proceedings B. P. Works, Journal M, Dec. 22, 1870.

Q. Mr. Hillman, have you prepared an exhibit showing the book value of the securities listed under Class F as of the date of June 20, 1863, or the nearest possible date thereto?

A. Yes, sir, I have, as far as the railroad stocks therein were considered.

Q. Will you file that exhibit and mark it Defendant's Exhibit No. 6-A, 1863?

A. I file it so marked.

Q. What page in this series of exhibits is it?

A. Page 45.

The paper was admitted in evidence and marked Defendant's Exhibit No. 6-A, 1863, September 3, 1914, C. B.

Q. Does that exhibit indicate upon its face the records from which it was made up?

A. Yes, sir it does.

Q. Does it truly represent those records?

A. Yes, sir.

Q. Take that exhibit and explain it as far as you may deem it necessary.

The Master: I would suggest that if the explanation consist in a statement of what appears on the exhibit, why, he can simply do that by saying that so far as that part of it is concerned it appears on the exhibit, which will save duplicating of the record and save your time.

Mr. Holt: I want to avoid what occurred a moment ago if I can.

The Master: In this other one all he did was to read the schedule. That gets it in the record, and it will also appear on the schedule, and it took quite a long time. My idea is to both shorten the time here and shorten the record also, that is, if it is agreeable to you.

Mr. Holt: I prefer it that way if I can get it.

The Master: If you do not succeed in doing it, I will try hard.

By Mr. Holt:

Q. Does this schedule, 6-A, relate to stocks or does it cover loans also?

A. It relates to stocks, the loans having been put forth under Class C.

Q. What do you mean by the nearest date to June 20, 1863?

A. The nearest date to which we could obtain the profits of these roads in order to determine what their book value was.

By The Master:

Q. Is this subject to the same embarrassment as the other schedule was, that is, the inability to get at additional data?

A. Yes, sir, there were no records of these roads on file.

Q. I know, but does the same condition exist, with respect to your inability to get additional original data, with reference to this schedule, as to the one you testified about before?

Mr. Holt: What the Master means is, did you have to go to Washington.

The Master: Does the same condition exist?

Mr. Holt: I do not think it does.

The Witness: We obtained these from the files of the Norfolk & Western Railroad at Roanoke, Virginia.

By Mr. Holt:

Q. I will then ask you the general question, Mr. Hillman; how did you arrive at the book value for June 20, 1863, of those stocks? Give us the process. You need not go into the

details of repeating and reading the schedules.

A. By taking the trial balance of the road for the nearest date we could find and seeing whether there was a profit or a loss on that trial balance, and then determining the value of the stock according to the amount of such profit and of such loss.

Q. Such profit or loss occurring when?

A. At the date, the last date which we could obtain. Shall I quote them?

Q. What was that date?

A. For the Virginia & Tennessee Railroad, January 30, 1860; for the South Side Road, September 30, 1861; for the Virginia & Kentucky there is no trial balance; for the Norfolk & Petersburg, March 31, 1861.

The Witness: Your Honor, I am going to ask on this page 45 that has just been filed that a line be drawn through the notation in the second paragraph of "no claim, too indeterminate."

Q. Where does that occur on the schedule?

A. In the second paragraph, page 45.

Q. What do you mean by paragraphs on this schedule?

A. It is divided into three paragraphs by horizontal lines.

By The Master:

Q. What is it you want to do to that entry?

A. I want a line drawn through it, as the claim is made elsewhere on our schedules. The notation, "no claim, too indeterminate," was a private memorandum that I had on my own working sheets, and intended for private guidance and not intended to be written here, since the claim had been made elsewhere for the value of these loans.

The Master: Now, if there is no objection I will have that struck right out of the schedule and the explanation go out with it.

Mr. Harrison: No, I would rather have that in.

The Master: Very well.

Mr. Holt: Not let the "too indeterminate" stand, but let the explanation stand.

Mr. Harrison: I want his explanation to stand.

The Master: Then the original schedule stands as it appears with the explanation made by Mr. Hillman. That of course is subject to cross-examination.

Mr. Holt: Very well. As I understand it the words "too indeterminate" are to be stricken out at the request of the witness, but his explanation of the fact that he has stricken it out is to remain in the record; is that the situation?

The Master: The schedule is already in with his endorsement on it, and it will be so printed, and the record will show that the witness desires to amend that schedule, by striking that out, and that will appear in the record. They object to having the original schedule, otherwise I would strike it out altogether. They object to having that done, therefore the record will have to show first, the record as put in, and second his request to amend.

Mr. Lilly: Would not we have the right, your Honor, to correct our own schedule to confirm to our views?

The Master: I should have to say this about that, that after you have introduced a schedule it must stand for whatever it shows. You have a perfect right to change or amend your schedule, but the other side are entitled to any benefit they may get from the effort you make to amend.

Mr. Holt: I do not think it makes a particle of difference. It is just as broad as it is long. The witness has given his position here.

The Master: Either side may have the benefit of any inaccurate statement that the witness may make. If they insist upon it the record must show that.

The Witness: I simply made the mistake of allowing the Judge to file that before I drew my pencil through it.

Mr. Hogg: I do not know whether his explanation applies to both statements there. I understand from the witness that it does, but I do not know whether he has made himself plain on that.

By Mr. Holt:

Q. How is that, Mr. Hillman?

A. It applies to both, claim having been made for those loans elsewhere, and this being simply a private memorandum on working papers, and not intended to be copied.

The Master: Of course after a schedule has once been put in so that it becomes a matter of evidence, if any change is to be made there is no objection to making the change, but of course if the other side insist the record will have to show the circumstances under which the change was made.

Mr. Holt: We are satisfied.

Q. Have you prepared a schedule showing the value of the property of the James River & Kanawha Canal Company as absorbed and capitalized by the Richmond & Allegheny Railroad Company, 1881?

A. Yes, sir, I have.

Q. What books and records if any did you examine in making up this schedule?

A. The first general balance sheet of the Richmond & Allegheny Railroad on file in the office of the Vice-President of the Chesapeake & Ohio Railroad Company in the City of Richmond.

Q. What year was that?

A. 1881.

Q. What else did you examine in the shape of records, if anything?

A. The trial balance sheet of the same road for 1882, the second trial balance sheet on file in the same office of the same railroad company.

Q. Of how many sheets does the exhibit so prepared by you consist?

A. Two.

Q. Will you file this exhibit as a part of your evidence, marking it Defendant's Exhibit No. 7, 1863?

A. I file it, so marked. It consists of pages 46 and 47.

The papers were admitted in evidence and marked Defendant's Exhibit No. 7, 1863, sheets 1 and 2, September 3, 1914, C. B.

Mr. Holt: My idea is this at this time but it may be that a suggestion can be made by the Master or someone else that would throw it into more convenient shape, to supplement at this point Defendant's Exhibit No. 7, 1863, relative to the value of the James River & Kanawha Canal Company by the introduction of such acts of the General Assembly of Virginia as according to our contention constitute a legislative declaration or admission concerning the value of that property and the stock therein. I thought those acts might come right in after this exhibit and be read along together.

The Master: Yes, I should think that would be the proper place for them.

Mr. Anderson: Would it not be more convenient to have all of the acts that you rely upon on this hearing published together in one volume instead of scattering them all through the record?

The Master: The Judge's idea is this, General, that here is a particular subject matter and it may be convenient for all concerned to have all of the material that relates to that particular subject matter marshalled at this point so that when we come to examine the record hereafter, either by way of argument or by way of reaching a conclusion, everything will be right under our hands, and readily attainable. That phase of it seems to me to be all right. In any event, I should be inclined to accede to the suggestion of Judge Holt as to the order in which he would like to have his case go in.

Mr. Holt: And then if it should be deemed by the Master or the counsel on both sides hereafter that it would be more convenient to bind the Acts in one volume, why, we could do that.

The Master: It may be that the Acts may be published in one volume anyway. The matter of duplicating a few pages where the printing can be of use in conserving your convenience and my convenience in facilitating a speedy and easy result, to me is not a matter to be considered very much.

Mr. Holt: I do not think so.

The Master: There is no harm, and if I can I want to get this case in the end so that everything that relates to these

various propositions will be in the handiest and most concise form possible, and if that should result in a duplication of printing, that will not be a very large matter in my judgment, and no harm will be done. On the other hand, it may be that a great deal of good may be accomplished. Anything that we can do here that will save us work hereafter is something that in my judgment we ought to do. As to these Acts, Judge, I do not know the contents of them sufficiently to know whether or not certain sections, or certain parts could be printed without printing the whole. Of course you know what you want, and if you need the whole, all right; on the other hand, if a section of one of these Acts would be everything that you require, that is all that you need offer, and if the other side want to put the balance in, we would have it all in at this stage. You get my point.

Mr. Holt: I do.

The Master: Whether you can shorten it any or not, I do not know.

Mr. Holt: It has been some time, your Honor, since I have read them, I thought I would not take the time now to stop to read them, but they will be published section by section, and if there should be an inappropriate section in there we can leave it out.

The Master: That is simply in the interest of conciseness and weeding out of immaterial matter. You get my suggestion, General Anderson, in relation to that?

Mr. Anderson: Yes.

Mr. Holt: These have never been printed, gentlemen. I have the printed Acts in the old record before me, and I defy these gentlemen to find a single one of them in there. We have been confronted with that statement a great many times. I have had them examined by three different gentlemen this morning.

Mr. Harrison: But the Act you referred to before was already in the record.

Mr. Holt: The one Act that we put in yesterday was printed before, but none of these have been.

Mr. Harrison: We have not said that those were in the

record. We cannot tell until you mention what they are.

The Master: I ought to make this suggestion, whether this bears on what we have before us right now, whether everything that is to be relied upon by you and passed upon by me is to be made strictly a part of this particular print and of this record; and the more I think it over the more I think it is absolutely necessary, for this reason. I do not remember how many copies were printed before, but the usual number were placed on file with the Supreme Court of the United States, and I suppose they were distributed, a copy to each Judge, and I assume that each Judge did as they usually do when they get through with a record, throw it out. The result of that probably is that there is not on file in Washington in the Supreme Court enough copies of the original report to go around among the Judges in case we undertook to make that a part of my report, and it would be perfectly absurd for me to undertake, therefore, to make as part of this record the former record, when there are not enough copies available for the court to use. I think that is probably the situation. The result of all that will be that this report of mine must show the whole record. Otherwise we could not be sure that the Court would have the benefit of everything.

Mr. Harrison: Certainly; it is a matter of convenience and we will incorporate them.

The Master: Anything that is to be relied upon, by way of argument or otherwise, is going to go into this report. Now, Judge, you may make your offer, please.

Mr. Holt: As a supplement to Defendant's Exhibit No. 7, 1863, and the corresponding exhibit for 1861, we offer a copy of an Act of the General Assembly of Virginia, entitled "An Act to incorporate the Virginia Canal Company, and to transfer the rights and franchises of the James River and Kanawha Company thereto," passed March 29, 1861, and found on page 70 of the Acts of Assembly of 1861; which copy we will mark Defendant's Exhibit No. 7, 1863, A.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7, 1863, A, September 3, 1914, C. B.

The Master: And the purpose of this evidence is to show an admission on the part of the State of Virginia, that is, that is the ultimate purpose of it, and as tending to show the value of this property at that time.

Mr. Holt: As of both dates.

The Master: Yes, I understand, as of both dates. That simply gives notice to the other side and to me that that is the only purpose for which I am to spend any time in examining this Act at all.

Mr. Holt: We likewise offer, for the same purpose, a copy of an Act of the General Assembly entitled, "An Act to amend and re-enact the act entitled an act to incorporate the Virginia Canal Company, and to transfer the rights and franchises of the James River & Kanawha Company thereto, passed March 29,1861," passed February 3, 1866; and mark the same Defendant's Exhibit No. 7, 1863, B.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7, 1863, B, September 3, 1914, C. B.

Mr. Harrison: What is the Act?

Mr. Holt: This Act is found on page 93 of Acts of Assembly 1865-6.

Mr. Harrison: What page?

Mr. Holt: Page 93. We likewise offer, and for the same purpose, a copy of a joint resolution of the two legislative houses of the State of Virginia, entitled, "Joint resolution in relation to an act entitled an act to amend and re-enact the act entitled an act to incorporate the Virginia Canal Company, etc., passed February 3, 1866," adopted February 9, 1866; and found upon page 458 of the Acts of General Assembly of Virginia, 1865-6. We ask that that be marked Defendant's Exhibit No. 7, 1863, C.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7, 1863, C, September 3, 1914, C. B.

The Master: Suppose you say "We put them in," instead

of saying that you offer them. The suggestion of offering might be open to the question that it was offered but not admitted.

Mr. Holt: In accordance with the suggestion of the Master we put these copies into the record and mark them as above indicated.

The Master: You get my point?

Mr. Holt: Yes, sir. It might be well in this connection also, your Honor, while on this subject of the James River & Kanawha Canal Company, to introduce the acts of the legislature by which as we claim, it was given away, as charged in our supplemental answer. We might just as well complete it I think while we are at it. It does not go to value so much as it does to the gift.

The Master: Your contention being that *quo ad* this controversy that was a misappropriation of it?

Mr. Holt: Yes, sir. In this connection we likewise offer and put into the record a copy of an Act of the General Assembly of Virginia entitled, "An Act to authorize the James River & Kanawha Company, to make sale and transfer of all its works, property, and franchises to the Richmond and Allegheny Railroad Company, and to define the powers and duties of the Board of Public Works in respect thereto," approved February 27, 1879. This Act is found on page 118 of Acts of Assembly of Virginia, 1878-79; and mark the same Defendant's Exhibit No. 7, 1863, D.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7, 1863, D, September 3, 1914, C. B.

Mr. Holt: We also make a part of the record a copy of an Act of the General Assembly of Virginia entitled, "An Act to authorize the James River & Kanawha Company to make sale and transfer of all its works, property and franchises and to invest the purchaser or purchasers with certain corporate rights, powers and franchises," approved April 2, 1879. This Act is found on page 386, Acts of Assembly, Virginia, 1878-79, and mark the same Defendant's Exhibit No. 7, 1863, E.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7, 1863, E, September 3, 1914, C. B.

Mr. Holt: We incorporate in the record a copy of an Act of the General Assembly of Virginia entitled "An Act authorizing the Board of Public Works to adjust the claims of the James River & Kanawha Company and appropriating the proceeds and providing for the safe keeping of certain deposits and authorizing the said James River & Kanawha Company to sell and convey its works and franchises to the Richmond & Allegheny Railroad Company," approved March 4, 1880. This Act is found on page 172, Acts of Assembly, Virginia, 1879-80, and mark the same Defendant's Exhibit No. 7, 1863, F.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7, 1863, F, September 3, 1914, C. B.

Mr. Holt: I want also to offer, your Honor, the deed transferring this property, but I have not a copy of it before me, but I have the reference to it.

The Master: Have it appear in the record that you put it in, and then when you get the copy, hand it to the stenographer so that it will be printed at this place. Let the record show that you introduced it now. Do you need the deed in full or is all you need the descriptive parts for consideration?

Mr. Holt: I would have to read it again to determine that, your Honor, that is the trouble. We incorporate into the record a copy of the deed conveyance from the James River & Kanawha Company to the Richmond & Allegheny Railroad Company dated the blank day of blank, 18—, and mark the same Defendant's Exhibit No. 7, 1863, G.

The paper was admitted in evidence and marked Defendant's Exhibit No. 7, 1863, G, September 3, 1914, C. B.

Mr. Holt: I believe those are all of the Acts on the subject of value, legislative declarations of value and transfer, etc.

Q. Take up the second item, Manassas Gap Railroad Com-

pany, Class G, of exhibits to supplemental answer. Have you prepared an exhibit for the year 1863 upon that subject, Mr. Hillman?

A. Yes, sir, I have.

Q. What is the page number in this series of exhibits?

A. Page No. 48.

Q. Does that exhibit show upon its face the sources from which it was made up?

A. Yes, sir.

Q. Is it a true exhibit?

A. Yes, sir.

Q. Will you file the same, marking it Defendant's Exhibit No. 8, 1863?

A. I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 8, 1863, September 3, 1914, C. B.

Q. I see it corresponds to Exhibit 8 of January 1, 1861, or at least it is so marked. What is the difference between that exhibit if any and the one filed for 1861?

A. The insertion of the date of June 20, 1863, after the words "at that time" so as to identify the exhibit.

Q. That is the only difference then between the two schedules?

A. Yes, sir.

Q. Could you tell from the records of Virginia examined by you, Mr. Hillman, whether or not any moneys have been expended upon the Manassas Gap Railroad Company between January 1, 1861, and June 20, 1863?

A. Yes, sir. There had not, according to the records of Virginia.

Q. Have you prepared a schedule, being a statement of stocks in and claims against Internal Improvement companies held by the Commonwealth on August 22, 1914?

A. Yes, sir, I have.

Q. Does that exhibit show upon its face the sources from which it was made up?

A. Yes, sir, it does.

Q. What were those sources, in a general way? I do not mean for you to give me volume and page, but briefly. Were they records of Virginia?

A. Yes, sir. Generally from the Department of Public Works records.

Q. Of that State?

A. Of the State of Virginia.

Q. Does the exhibit correctly represent the public records examined?

A. Yes, sir.

Q. Will you file the same as a part of your evidence, and mark it Defendant's Exhibit No. 9, 1863?

A. I file it, so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 9, 1863, September 3, 1914, C. B.

Q. What is its page number following this list of schedules?

A. 49.

Q. I see marked in the upper right hand corner thereof that it corresponds with Exhibit No. 9, January 1, 1861. What is the difference between the two exhibits, if any?

A. None.

Q. What is the reason therefor?

A. The securities were all—

By The Master:

Q. Is not the reason this, that there is no change in the status, so far as the records of Virginia show, between January 1, 1861, and June 20, 1863,—is not that the reason.

A. Yes, sir.

The Master: Well, then, that covers it all.

Mr. Holt: That is disposing of it just right.

The Master: I suppose that is what you wanted.

Mr. Holt: Absolutely.

The Master: It puts it in a nutshell, and then we know right where we are.

Q. Have you prepared another exhibit showing the amount

of taxes, fines, etc., paid by West Virginia counties to the State of Virginia after June 20, 1863?

A. Yes, sir, I have.

Q. Will you file the same as a part of your evidence and mark it Defendant's Exhibit No. 10, 1863?

A. I file it, so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 10, 1863, September 3, 1914, C. B.

Q. I notice in the upper right hand corner thereof a statement that it corresponds with Exhibit 10, January 1, 1861. What is the difference between it and the exhibit for 1861, if any?

A. There is no difference.

Q. What is the reason therefor?

A. There having been no change on the books of Virginia in the interval between January 1, 1861, and June 20, 1863, as regards the matters dealt with in this exhibit.

Mr. Holt: Now, gentlemen, we come to the final exhibit. Have you gentlemen been furnished with a white paper in place of the resume on the last blue-print?

The Master: That is subject to some pencil qualifications which have been made.

Mr. Holt: That is what I am trying to find out, whether their copies have been changed.

The Witness: That is the corrected bank statement.

Mr. Holt: Of course the white sheet now is the summary, in lieu of the blueprint, page No. 51, which goes out because of those corrections during the examination.

Q. Mr. Hillman, have you prepared a statement, being a summary of the claims of West Virginia for consideration in settlement of debt as set up by your exhibits for 1863?

A. Yes, sir, I have.

Q. This, as I understand it, is a statement of the result as claimed by the defendant, based upon the exhibits of 1863?

A. Yes, sir.

Q. What do you find to be the sum total of all the assets

embraced in the various classes set forth in the exhibits for 1863?

A. $33,348,660.78.

Q. Have you indicated thereon what 23-½ per cent. thereof would be, or West Virginia's proportion of the value of those assets as claimed by her?

A. Yes, sir.

Q. What is the amount thereof?

A. $7,836,935.28.

Q. Does that summary likewise embrace the amount of taxes paid by West Virginia counties to Virginia after 1863?

A. No, sir, it does not.

Q. What is the item $224,799.63?

A. That is the item of the taxes paid by West Virginia counties to Virginia after June 20, 1863.

Q. That is on this summary statement, is it not?

A. Yes, sir, it is.

The Master: All it means by that is that it is not a part of the summary as to which he has testified.

Mr. Holt: But it is a part of this paper.

Q. When you add the $224,799.63 to the $7,836,935.28, what result do you have?

A. $8,061,734.91.

Q. Will you file this summary as a part of your evidence and mark it Defendant's Exhibit No. 11?

A. I file it, so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 11, 1863, September 3, 1914, C. B.

Q. That is page 51 of this series of schedules, is it?

A. Yes.

Mr. Holt: Now then, your Honor, this deed from the Kanawha Company to the Richmond & Allegheny Railway Company is in process of copying and will be ready to hand in in the morning.

The Master: Hand it in to the stenographer when it is copied.

Q. Mr. Hillman, during the course of your examination upon the schedules of the defendant or the defendant's exhibits for 1863 you frequently stated that certain securities of the State of Virginia were sold and that sometimes they were paid for in cash and sometimes in bonds, and other times partly in cash and partly in bonds. What bonds did you mean in that connection?

A. I meant the bonds of the State of Virginia.

Q. When bonds were taken in payment of stock sold by the Commonwealth of Virginia in those schedules as set forth by you at what value were those bonds received by the Commonwealth?

A. At par and interest.

Mr. Holt: Your Honor, of course with the understanding that if we have omitted any question that we should have asked Mr. Hillman in chief, we will have the opportunity to inquire of him later, we now tender Mr. Hillman to the State of Virginia for cross-examination.

The Master: Then we will stand adjourned until tomorrow morning at ten o'clock, accompanied by the suggestion that I would like to have all concerned here promptly on the hour. We lost about twenty minutes this morning, and that means quite a good deal for all concerned. And while we are keeping these hours, I would like to have the parties, so far as reasonable and feasible, be on hand promptly on the hour.

Adjourned to September 4, 1914, at 10 A. M.

BEFORE THE MASTER

Richmond, Virginia, September 4, 1914.

Present, the same counsel who appeared on yesterday.

The Master: Now, Mr. Harrison, I suppose in your examination you will follow the order that we have been proceeding under; that is, you will start with the first class and go right along, of course subject to such necessary modification as may be necessary, and then we will have the record so we can pick it right up in the regular order.

Mr. Harrison: I expect to follow out the order that they did.

The Master: Before we proceed, it was suggested yesterday morning that neither side had had the necessary opportunity to make a careful examination of the record as printed up to date for the purpose of ascertaining whether there were any additional corrections to be made. I would like to inquire this morning whether each side is ready to state that the record is satisfactory or that they have some changes they wish to make.

Mr. Anderson: I find the record is admirably printed, and as far as I am able to discover the errors are almost entirely typographical.

Mr. Hogg: I have not had an opportunity to examine into that, if your Honor please, but I will do so at the noon hour.

The Master: And report at the beginning of the afternoon session?

Mr. Hogg: Yes.

Mr. Anderson: I have not compared the figures in these different schedules; there are thousands of them and it would take several days to do it, possibly.

The Master: I assume that the figures are all right.

Mr. Anderson: I have no doubt they are correct. That is up to the proof-reader.

Mr. Holt: There is only one thing, so far as I am concerned. The other day I called attention to the fact that the headings of some of the columns were a little misleading in the exhibits for 1861, and I wanted Mr. Hillman upon the witness stand to change their nomenclature.

The Master: Would you like to have that done this morning before we proceed, or would you like to look that over and do it the first thing this afternoon? Of course you both understand that even if the record continues to get printed and develops some error, that will be corrected; but what I want to do is to keep pretty careful watch, and when we do close, then the record will read all right.

Mr. Holt: I see that those columns in this printed matter and also on the books, General Anderson have been changed. It corrects itself.

The Master: Then we will have a report from Professor Hogg at the opening of the afternoon session, dependent upon which I will give instructions with relation to the final printing of so much as is already in type, so that they can distribute the type.

Now you can proceed, Mr. Harrison. Mr. Hillman will take the stand.

Continuation of the examination of

CONWAY W. HILLMAN.

Cross-examination by Mr. Harrison:

Mr. Harrison: In cross-examining this witness we do not intend thereby to waive our objections to his testimony.

The Master: That is understood.

Mr. Harrison: Our position being that if it should become pertinent to ascertain the values of the investments that are listed in the defendant's supplemental answer, the date as of which those values must be determined is June 20, 1863, and that any testimony attempting to fix their values as of

January 1, 1861, or to show how and on what terms Virginia disposed of them after June 20, 1863, is wholly irrelevant and immaterial. With this understanding I will now proceed with the cross-examination of the witness.

The Master: The understanding is that you reserve all your rights.

Mr. Holt: Will you allow us to make a statement in that connection too?

The Master: Certainly.

Mr. Holt: That it must be understood, and now our position is repeated upon that proposition, that by the offering of schedules on 1863 we do not mean to waive by implication or otherwise our contention that 1861 is the proper date.

The Master: That is perfectly understood.

Mr. Holt: Nor do we intend to waive our position with reference to 1861 by the introduction of schedules showing what was actually received upon them at a later date, but that is simply a part of the history of the situation.

The Master: Precisely. Neither side will assume at this stage of the investigation what date will be ultimately determined upon, and it is incumbeat upon both sides in my judgment to try their case upon each hypothesis, so that whatever may turn out as to the final conclusion their case will be fully presented as to either hypothesis, and the fact that they are establishing one and at the same time another that may be inconsistent therewith will not have the slightest effect upon the ultimate result. I think I understand the thing perfectly.

By Mr. Harrison:

Q. Are you the accountant who made up the statement upon which the supplemental answer of the defendant is based?

A. No, sir.

Q. Have you examined the exhibit filed by the defendant in the record in this case beginning at page 1053 and extending to page 1065?

The Master: What record is that, Mr. Harrison?

Mr. Harrison: The printed record.

The Master: You mean the original record?

Mr. Harrison: Yes, sir.

The Master: You do not refer to the record in this case, you refer to the original record?

Mr. Harrison: I said the record in this case, not this hearing.

The Master: I did not get just exactly what you meant.

Mr. Harrison: If the witness misunderstands me I will ask him again.

The Master: Won't somebody furnish me with a duplicate of that record. I do not happen to have one on my desk.

Mr. Gregory: We have sent for a copy, your Honor.

Mr. Harrison: Please repeat the question to the witness.

(Question repeated by the stenographer).

The Witness: Do not take this down.

Q. You had better answer the question.

A. I have not the book before me to say whether I looked at it or not.

The Master: While he is looking that up, I will simply make this inquiry. Of course there are a very large number of details involved in these schedules which have been submitted by the defendant. I assume that they have all been checked up by an accountant representing the plaintiff. Now will it be proper for me to assume, later on, when I have occasion to examine these for any purpose, that so far as they are not questioned by the cross-examination their accuracy as to amounts is admitted? I should like to have some arrangement or understanding about that so that I will know right where I am. Would it be proper for me to do that?

Mr. Harrison: I am inclined to think that that would be true.

The Master: Of course at some stage I would like to know just exactly what the issues turn on, and if it is left in that way, if it is not questioned, I will know that they are conceded and we won't have to spend any time on such items.

Mr. Holt: We have assumed that their accountant has gone all over them and checked them, and if he does not criticise them he has found them correct.

The Master: I would like to have the record show, so that there will be no confusion.

Mr. Harrison: I would not like to be concluded on that at the beginning of the cross-examination.

The Master: Oh, no. All I want is not to be in confusion as to what may or may not be in conflict.

The Witness: No, sir, I did not examine the pages mentioned.

Q. Had you seen it before this morning when it has just been exhibited to you?

A. Yes, sir, I have read over the testimony in this book.

By The Master:

Q. Well, now, you say this book. Make some reference to it. Do you refer to the original record?

A. The original record.

The Master: It would be more satisfactory to me if both counsel and the witness, when they refer to the original record, designate it as the original record, because otherwise it might result in confusion.

Mr. Harrison: It is really Volume 1 of the record.

The Master: No, it won't do to say that it is Volume 1 of the record, because as I have already explained the case cannot go before the Supreme Court in that way. It will go on the record that I put before it in this case. Then if we refer to whatever we have here as the record and to that as the original record, we will understand it. If you are referring to the original record simply say the original record.

Mr. Lilly: That is known as Volume 3 of the West Virginia compilation.

The Master: The original record is a very fair designation. If it is convenient I would like to have the counsel and the witness accomodate themselves to this idea.

Mr. Harrison: I am referring to it as the record.

Mr. Holt: But that is what the Master is not doing.

The Master: The point is this—

Mr. Holt: He is calling the present record the record, and that the original record.

Mr. Harrison: I intended to say the original record.

The Master: Now whenever a reference is made, and I

make this suggestion now for the guidance of all concerned throughout the continuation of the examination—for instance the slip Mr. Hillman made in saying this book—now this book does not convey any information on the record. Of course I happened to sit here and see what he had in his hand, but the Court did not see it. Whenever reference is made to any document it should be identified.

The Witness: I understood that the question identified the document, and the reference was not to the book I had in my hand but to the book he mentioned.

The Master: That is simply a matter of detail, but what I want is, as we go along in the record, I want the questions just to indicate what they are directed to and the answers of course to follow the same line. It may be understood from now on that so far as any reference need to be made to the record taken prior to this time it may be referred to as the original record. When we refer to the record, we will refer to the record on this hearing. When we say the record I will understand it to be the record of this particular hearing on the amendment to this answer. The original record will mean everything that precedes that. I think that is clear now.

By Mr. Harrison:

Q. Do I understand from your last answer that you have read the exhibit?

A. I have read the original record, but casually, and have not examined the pages of the original record which you mentioned critically or in detail.

Q. I did not ask you whether you had read the original record. I did ask you, however, if you meant to say by your preceding answer that you had read the exhibit referred to.

A. I say then that I have not read the exhibit referred to.

Q. Have you given it any examination at all?

A. Only the most casual.

Q. Will you please tell me whether you find on that exhibit the figures which you have given as constituting what you call cash on hand January 1, 1861?

The Master: This relates to Class A?

Mr. Harrison: Yes.

A. On page 1054 of the original record, I find the figures which are on my exhibit No. 1, with one exception, which is the commonwealth fund.

Q. I find the commonwealth fund is stated on the exhibit referred to in the original record under the caption balance on January 1, 1861, as $255,180.99. What do you show on your exhibit?

A. $252,842.67.

Q. There is then a difference in the figures shown by you and the figures shown by the exhibt of how much?

A. $2,338.32.

Q. The exhibit which we are now referring to shows the Internal Improvement Fund to be $5,958.28. Any difference between those figures and the ones shown by you on your exhibit?

A. No, sir, none.

Q. Any difference between the figures shown by the exhibit and your figures under the Literary Fund?

A. No, sir.

The Master : He says there is no difference between the figures shown by his exhibit and the Literary Fund?

Mr. Harrison: They are the same.

Q. Any difference between your figures and the figures shown by the exhibit for the Sinking Fund?

A. No difference between the figures shown on page 1054 of the original record and the figures shown upon my exhibit No. 1, in regard to the Sinking Fund.

Q. Now, the total of balances on January 1, 1861, as shown on the exhibit in the original record at page 1054—

The Master : You refer now to exhibit 1, but in addition to that just say page 1. Page 1 will mean the present record.

Mr. Holt: I do not believe that the exhibits for 1861 were paged along as they are for 1863.

The Master: Yes, they are in the printed record. If he says page 1, I will know he means the printed record, and if I have occasion to trace it down I will be able to put my finger right on it.

The Master: I am having the tops of these pages changed, partly for the reason that I had occasion yesterday to try and find a certain exhibit, and I ran this record through at least four times before I could put my finger on it. I am going to have at the top of these columns something which will show me where I can find out in a minute without spending any time. Where we refer to an exhibit that is printed in this record you can refer to it by the page, and then I can simply trace it back right away. That is one great advantage that we are going to have with this concurrent print.

Q. Now the total of balances on January 1, 1861, shown on the exhibit in the original record at page 1054 is $1,104,374.46. This total shown on your exhibit is what?

A. Shown on my exhibit No. 1, page No. 1, of the Defendant's Exhibits in the present record, is $1,102,036.16.

Q. So that you and the exhibit are in agreement as to the amount of cash shown on hand January 1, 1861, with the exception of the difference you stated a while ago in the Commonwealth Fund, amounting to $2,338.32; is that correct?

A. Yes, sir.

Q. Will you please state the amount of cash on hand, as it is called, according to your statement, your exhibit, June 20, 1863?

Mr. Holt: You are going now to the exhibit which is the corresponding exhibit for 1863, Mr. Harrison?

Mr. Harrison: I will withdraw that question.

Q. I find the supplemental answer states the value of the stock of the Richmond, Fredericksburg & Potomac Railway Company, January 1, 1861, at $275,200. That is the par value of the stock, is it not?

A. Yes, sir, it is.

Q. You have testified, as shown on your exhibit No. 2—

The Master: That is page 54 that you just referred to, of the supplemental answer.

Mr. Holt: Mr. Harrison, if I do not interrupt you, may I request the stenographer to read me your question and answer.

Mr. Harrison: Yes.

(Question and answer repeated by stenographer).

The Master: If you can, without too much inconvenience, just locate the page.

Q. In other words, the state owned on that date 2,752 shares of stock of the par value of $100 per share, aggregating $275,200; that is correct, is it not?

A. Yes, sir.

Q. I find that you have testified as shown by your exhibit that the book value of that stock on January 1, 1861, was $150 a share, making the total value of the stock $412,800. Please tell me what you mean by book value.

The Master: That exhibit that you refer to now is page 2?

Mr. Harrison: Yes, sir.

A. The book value means the par of the stock plus the amount of profit which had accrued on the stock and which could be or would be divided up amongst the stockholders if the corporation were closed up.

Q. Does it mean the same thing as actual value?

A. Yes, sir.

Q. Then if you were employed to advise a client whether or not he should buy stock, you would advise him to buy it according to the book value, that truly representing its actual value, and would make no further inquiries on the subject as to its value; is that correct?

A. No. If I were acting in an advisory capacity concerning the purchase of a stock I would take into consideration more than the book value of the stock. I would take into consideration its earning capacity and also the method which had been followed in determining the book value.

Q. Do you mean to say that those additional considerations would be taken account of in order to determine its actual value?

A. In order for me to give the advice to the client whether or not to purchase the stock.

Q. My question is would those additional considerations be

taken account of in order to determine the actual value of the stock.

A. No, sir; the actual value of the stock would be determined by its books.

Q. Without reference to whether the securities in which the surplus was invested were good or bad?

A. Oh, no, sir; we would have to enter into an investigation to determine whether or not the surplus or the price of securities had been marked up unduly beyond their value or their cost; we would have to enter into a computation as to whether their supplies and the material on hand had really been paid for and were worth the amount at which they were carried on the books; we would have to go through their assets and also their liabilities and determine all of those facts.

Q. Do I understand you now to testify as an expert that you would accept the value of stock shown on the books as constituting the true actual value of that stock without any further investigation?

A. No, sir, I would not.

Q. Then there must be a difference between book value and actual value, is there not?

A. Yes, sir, there is.

Q. Then you were wrong when you said that there was no difference, were you not?

A. Yes, sir, taking that view of it, that was not the proper statement.

Q. Nevertheless you have charged to the State of Virginia this book value as its true value, have you not?

A. Yes, sir, I have given the book value of the Richmond, Fredericksburg & Potomac stock as $150.

Q. My question was if you had not charged this so-called book value to the state of Virginia as the true actual value of the stock January 1, 1861.

A. My answer to that is that I have made no charges to the State of Virginia; that I have entered the actual value upon my Exhibit No. 2, page 2.

Q. Do you mean to say that you have not testified, as shown by your exhibit, that Virginia should be held accountable for

that stock on the 1st of January, 1861, at a value of $150 a share?

A. No, sir, I have made no such testimony.

Q. You have not?

A. No, sir.

Q. Do you now mean to say that she should not be charged with it on that date as of that value?

A. I mean to say that I have no determination, nor is it my province to state whether or not she should be charged. It is my province to state the facts, which I have done.

Q. Then have you testified as a fact that $150 per share, as of January 1, 1861, was the true actual value of the stock?

A. I have testified that it is the book value of the Richmond, Fredericksburg & Potomac stock. I have testified to nothing else.

Q. But not its true actual value?

A. I have said nothing on that point.

The Master: I do not understand that the schedules of West Virginia are predicated upon anything except book value. I understand they contend—that they do not insist that they are legally synonmous.

Mr. Harrison: This witness has, however, extended in his summary the book value of these stocks as constituting their actual value.

The Master: I do not so understand it. It does not have that effect with me. Of course the whole purpose of this examination is to put upon the record information that will be information to me. I can simply say how I understand it. Of course it is all open on cross-examination. The way I understand these schedules is this; I do not understand, in the first place, that the witness has undertaken to testify to actual value at all, but I do understand that these schedules are all predicated upon book value. I do not understand that West Virginia contends that they are synonomous with actual value, but I do understand that they contend that that is evidence tending to show what the actual value is on that date, subject of course to criticism. Now, I do not understand that any of the schedules, at least they do not produce that effect on my

mind, that any of the schedules introduced on the part of West Virginia are intended to be *per se* probative of actual value. They do show book value, and that is all they do show. Do I understand it correctly?

Mr. Holt: You do.

The Master: That is the way it lays in my mind.

Mr. Holt: That is unquestionably so, and of course when the proper time comes we will be armed with the authority to show what that means under the circumstances of this case.

The Master: Of course I will hear you on that later on.

Mr. Holt: Certainly.

The Master: But I do not understand that either the witness or the schedules undertake to establish that this is the actual value. You may later on have authority, as you say, that that results in the conclusion that that is book value.

Mr. Holt: Under the circumstances of this particular case.

The Master: Entirely so, but it is proper for Virginia to criticise the book value as they are now doing. I simply want Mr. Harrison to get what my mind is as to the probative value of the schedules as they now stand. I shall not treat book value necessarily as actual value.

Q. Will you be good enough to state what you show as the surplus of the Richmond, Fredericksburg & Potomac Railroad on January 1, 1861.

A. I show no surplus January 1, 1861. I mean by that I do not show a surplus; I do not mean that there is not any, but I mean that I do not show any figures on that date.

Q. As of what date do you show a surplus in 1861?

A. March 31, 1861.

Q. Will you state now what the surplus is as shown by you as of that date?

A. $562,819.05.

Q. Did you or not base your $150 a share on that surplus as of March 31, 1861?

A. On that surplus in connection with the surplus of March 31, 1860.

Q. Was that done for the purpose of finding the surplus January 1, 1861?

A. It was done for the purpose of determining the book value of the stock on January 1, 1861.

The Master: That is not a direct answer to the question. I do not think it is intentional on your part, but I am going to make some of these suggestions as we go along. In the first place, this case is not being tried before a jury. I am hearing it, and the witness must, so far as he can, in answering questions answer directly. I am simply giving a general suggestion that will be of use to the witness. If the witness simply answers the question directly and stops we can get along a great deal better than if he carries his mind forward to a conclusion that he thinks may be in the mind of the examiner. The examiner knows what he is asking the witness for, and all the witness has to do is simply give a direct and short concise answer and stop right there. That is not a direct answer to that question. His question was, was that for the purpose of ascertaining the surplus on January 1, 1861. You went further than that. I am simply commenting on this so that you will appreciate the situation. The record will be cleaner. And you do not get anywhere by an indirect answer, because I am hearing the whole thing and I know what an indirect answer is. I know that you do not intend to do it, but the answer to that question was undoubtedly that it was for the purpose of ascertaining the surplus on January 1, 1861. That is so obvious that it is hardly worth discussing. You anticipated and went further than that, because you thought that he was aiming for another point, which undoubtedly he was, but that was not the kind of answer which you ought to have made. You answer directly every question that is put to you upon either side and when you get through stop, and then if they want anything more they will ask it. Do you get my point?

The Witness: Yes, sir.

The Master: This is not intended as a lecture to you, but simply a suggestion to get the record as short as possible and it will shorten the examination tremendously when those rules are followed by both counsel and witness. Excuse me, Mr. Harrison, for interrupting. It was a good place to interrupt

here because no possible harm was done by either the question or the answer, and it may save difficulty and friction perhaps, later on.

The Witness: I knew what the next question was going to be.

The Master: You won't do it every time but five times out of ten when you anticipate that way you will get into trouble.

The Witness: All right, sir.

The Master: That is the trouble that most witnesses have; they are too anxious to facilitate progress. That is why fools and children make the best witnesses. Then cannot anticipate and all they can do is just tell what they are asked.

(Question and answer repeated by the stenographer).

Q. I ask you again to answer my last question.

A. Yes, sir, it was.

The Master: I want to make this suggestion. I do not know what the fact may be, but I imagine that Mr. Harrison may desire to go into a great many of the details which result in some of these conclusions, and I would suggest that you have your assistant get your working material where you can put your hand on it readily so that we do not have to wait in the course of the examination.

The Witness: I think we have everything that will be called for.

The Master: That is all right then. If you have everything handy by you it will save time.

The Witness: As far as we can determine we have all the papers.

Q. Now, will you please state on what the 1861 surplus of $562,819 is predicated.

A. Upon the trial balance of the Richmond, Fredericksburg & Potomac Road dated March 31, 1861. This is shown on pages 8 and 9 of the present record, which is Exhibit No. 2.

Q. Does the trial balance to which you have just referred show how that book surplus is invested, how it is represented, if so please give us that information?

A. No, sir; it does not show the direct investment which represents the surplus.

The Master: Unless that is pursued further, for my information I want to know just exactly what the witness means by that.

By The Master:

Q. Do you mean that the trial balance does not show—

Mr. Harrison: I am going to pursue it, if your Honor please.

The Master: Then I will strike that out.

Mr. Harrison: If I do not pursue it so as to develop the matter that you have in mind I would be only too glad to have you bring it out.

The Master: Strike that out then.

By Mr. Harrison:

Q. Were you not instructed, or rather asked by the Master, on your examination in chief, to furnish that information? For your information I will turn to page 43 of this record wherein on that subject the Master had this to say: "If Mr. Hillman has it right handy, how would it do to insert right here in the record the list of the assets upon which this book value is predicated? If he has not it, he need not bother to do it."

The Master: You are reading from the stenographer's transcript?

Mr. Harrison: Yes, sir.

The Master: Hereafter, after today, I wish you would get your printed record. I will follow you on this transcript.

Mr. Harrison: It is the printed record at page 28.

Q. (Continuing) "If it is too long, why then he need not bother, but this would be the natural place to look for it in the record." To which you replied: "No, your Honor, I have not taken them off in detail for those years. It can be done, and I will agree if your Honor desires to furnish a copy as sheet No. 2 on this exhibit," You are not prepared with that information this morning, then, are you?

A. No, sir, I cannot give the exact way in which this surplus was invested.

Q. The trial balance to which you have referred, and upon which you rely to show the book value of this stock in January, 1861, where did you find it?

A. In the Treasurer's office of the Richmond, Fdericksburg & Potomac Railroad Company, in the First National Bank Building in the City of Richmond, in the form of a printed report, which printed reports were bound in volumes.

Q. Then you did not find that information in any of the records of the State of Virginia?

A. No, sir.

Q. Well now, did you examine those books in the office of the Richmond, Fredericksburg & Potomac Railway at Richmond yourself?

A. Yes, sir.

Q. Did you make this copy yourself?

A. No, sir, I did not make that copy myself.

Q. How then can you say that it is a copy, of your own knowledge?

A. For the reason that I sent one of my men over to do it; it was done under my direction.

Q. Then when you say that it is a copy, it is not based upon your personal knowledge but upon information derived from others?

A. From information derived from one of my own men, another individual.

By The Master:

Q. What is his name? Give his name.

By Mr. Harrison:

Q. What is the name of the man?

A. My recollection is that I sent Mr. Parsons of my force over there to copy that.

Q. Now, looking at that balance sheet which you have been testifying about—

Mr. Holt: I thought it was understood, Mr. Harrison, that

Mr. Potter would check that up, as it was copied here. We can bring a certified copy of it, if they are going to make that character of point.

The Master: Of course I cannot anticipate.

Mr. Holt: We discussed all that in the beginning.

The Master: If that question is raised, Judge, you will have opportunity to do it.

Mr. Holt: And we furnished a copy of it to them two weeks in advance.

The Master: If any question is raised as to the foundation of any of the testimony which makes it necessary to supplement the record, it is going to be open to West Virginia, as it will be to the other side under similar circumstances, to put in additional testimony.

Mr. Holt: I understood that they were not going to require anything of that kind.

The Master: I cannot anticipate just exactly what purpose Brother Harrison has in his mind, but there may be another purpose than the one that you and I have in our minds, for the examination, which purpose I won't discuss, because if I did it might render it nugatory.

Mr. Harrison: I want to test, as I go along, the accuracy of the witness in testifying.

The Master: I had a suspicion that that might be in your mind.

Mr. Harrison: I want to show whether he is testifying as to his own knowledge or from information that he has been furnished with by somebdy else.

The Master: That is a proper inquiry.

The Witness: Will you allow me to supplement my answer?

The Master: Yes, unless there is objection.

The Witness: That I did take off personally from the Richmond, Fredericksburg & Potomac books the surplus of $562,819.05, and that my assistant was sent over to make the copy of the trial balance which resulted in that profit and loss account, which I understand was the document that the court wished laid before him.

Q. You have several times referred to having examined the books of this railroad in its office at Richmond. What you actually examined was a printed copy of an original report, was it not?

A. Yes, sir.

Q. You never saw the original papers, did you, the books of original entry?

A. No, sir, I did not.

Q. Now, will you please refer to that trial balance sheet of March 31, 1861, filed by you as Exhibit No. 2, and tell me if you can how much, if any, of that apparent or book surplus is invested in the road itself as rolling stock, station buildings, etc? Is any of it so invested?

A. I cannot tell.

Q. Now, let me see if I cannot assist you. What are the current assets shown on that sheet, liquid assets, accounts and bills receivable?

The Master: You are referring now to Defendant's Exhibit No. 2, found on pages 8 and 9 of the printed record?

Mr. Harrison: Yes.

A. $230,453.97.

Q. Now, what are the current liabilities, as shown by that trial balance?

A. $77,642.57.

Q. Now, if you deduct the current liabilities from the current assets it will give you what figure as representing the net current assets?

A. $152,811.40.

Q. Very well. Now, if there is net $152,810 of current assets, deduct that from the book surplus.

The Master : That is the item of $562,819.65?

Mr. Harrison: Yes, sir.

Q. And what does it leave?

A. $410,007.65.

Q. Then we find that of that $562,819 of so-called surplus $152,811 is represented by current assets and four hundred

and ten thousand and odd dollars is represented by construction account, is it not?

A. Yes, sir.

By The Master:

Q. Do you remember right now when this road was constructed, when its construction was begun? That may appear somewhere.

Mr. Anderson: It was chartered in 1834, built about 1837.

A. Your Honor, the first printed record of a report, which happened to be an incomplete one, but would show that the road was in some kind of operation, was dated June 20, 1835.

Q. So that the item of $2,211,189.90 represents total construction cost from sometime in 1834 up to 1861, is that right?

A. Yes, sir.

Q. How much during that time had been charged off to maintenance or for repairs or anything of that kind you are not able to state?

Mr. Harrison: I was just coming to that in my next question.

Q. Are you able to state during that time how much had been charged off to maintenance or repairs or depreciation, either one of the items?

A. No, sir; that is all included in a total of the operating expenses which I have not in detail. I can give you the total operating expenses for that period.

Q. Well, do the items of operating expenses contain any charge offs for depreciation?

A. At that date, no, sir, they did not. It was all in renewals or repairs; they charged no depreciation at that time.

Q. Were the charges for renewals included in operating expenses, or were the charges for renewals in this aggregate of $2,211,189.90?

A. I should say that they were included in the operating expenses.

By Mr. Harrison:

Q. Why should you say so, have you any evidence on which to base that?

By The Master:

Q. Are there any entries that you have been able to examine that enable you to reach that conclusion?

A. I have made no examination on that point, but I know that that was the custom of railroads up until the 70's.

Q. Then your statement that this road charged renewals to operating expenses and did not charge it into construction costs is not predicated upon your knowledge of the action of this road, but your general information of other roads during that period, is that it?

A. Yes, sir.

Q. What we want is what the books show, and if these outside facts are material and relevant they will be given also; but so far as you are concerned as a witness we are entitled to ascertain just exactly what the accounts show. Isn't that so, Mr. Harrison?

Mr. Harrison: Yes, sir.

The Master: Then let us have this understanding, as far as the accounts themselves show, as the result of the examination of Mr. Hillman, they disclose nothing with reference to the question of either depreciation or renewals—or I will put it this way.

Q. The books show nothing with reference to any item of depreciation so far as you have been able to ascertain?

A. I have made no effort to ascertain that.

Q. That does not answer the question. So far as you have seen the books you have seen nothing on the books that indicates what was done with reference to a charge or otherwise for depreciation, is that right?

A. I cannot say that, your Honor, for the reason that I made no examination.

Q. You are not able to give us any information as to whether or not the books of this company make any account or made any account of the item of depreciation?

A. No, sir, I am not.

Q. Now then, so far as your examination shows are you able to give us any information as to what was done with ref-

erence to renewals, whether renewals were as a matter of fact, not based now upon your general impression as to what roads usually did during that period, but the question is were you able to ascertain from the books of this company whether or not they charged renewals to operating expenses or to construction cost?

A. No, sir; I made no such determination.

Q. And you are not able to give us any information on that point?

A. Not from the examination I have made so far.

Q. Well, precisely.

A. I mean by that that if that is requested I can do so.

Q. But up to date you are testifying as to knowledge you now have?

A. Yes, sir; I cannot do so.

Q. We won't speculate on what you may hereafter obtain, because if that is essential we can look that up later and get the exact facts rather than speculate as to what the fact may be.

A. Yes, sir.

Q. I notice in what Mr. Harrison terms as liquid assets an item there bills receivable, $135,849.31. Did you make any examination of the details entering into that aggregate to ascertain the character of the bills receivable, whether of long or short standing and as bearing upon the probability of value to the road or otherwise?

A. No, sir, I did not.

By Mr. Harrison:

Q. Did you make any investigation to ascertain the value of the stock, the stock of the Potomac Steamboat Company in which $38,900 is invested?

A. No, sir, I made no investigation as to the value of this security.

Q. Then you know nothing at all about the value of the assets as shown on that trial balance sheet of 1861?

The Master: Perhaps you had better say actual value so as to keep up the distinction between book value and actual value.

Q. I will say market value.

The Master: You had better keep the distinction right up.

Q. Answer the question.

A. No, sir.

Q. Does your trial balance sheet show the cost of the road on the 31st of March, 1859?

A. Yes, sir, on page No. 4, of the Defendant's Exhibits in this present record.

The Master: Pages 4 and 5.

Q. What is the amount?

A. $2,002,331.41.

Q. Do you include engineering expenses, etc., of $2,321.87? If not, why not?

A. The reason is that that is mentioned separately and is for a survey, pending the extension of the road, which may or may not be made later on; and until it becomes part of the construction, the engineering expense may turn out to be simply a charge to income on account of the proposed extension being afterwards abandoned.

By The Master:

Q. That is to say, it might never be actual construction?

A. Yes, sir.

By Mr. Harrison:

Q. Don't you include it on your trial balance sheet of March 31, 1860?

A. Yes, sir.

Q. Then if it is proper in one why is it not proper in the other?

A. Because at that time it had been transferred by this trial balance to the account, cost of road and property, and therefore, having been transferred by the company in its report as part of the cost of the road and property, I assumed

that the survey had become a fact of construction, or a construction fact, and that it was therefore a proper charge.

Q. Now what do you show to be the construction of the road, the total construction cost, of the 31st of March 1863?

By The Master:

Q. Before you pass to that, is it not a fact that these trial balances are transcripts of the trial balances that you found, and that if there is any re-arrangement of items that appear in these transcripts that you submit here, it is because that re-arrangement existed in the original from which you made the transcript?

A. Yes, sir.

Q. Is not that the fact about it?

A. Yes, sir.

Q. And this item of $2,321.87, the fact that that appears in a different column is not because of any re-arrangement of yours, but is a fact because you made the copy from the original balance sheet, is that it?

A. Yes, sir, that is correct.

Q. And the suggestion which you made as to why the change occurred is your judgment as to why the party who made up the original trial balance changed the item, is not that it?

A. Yes, sir.

Q. The truth is that you simply copied these trial balances as you found them, is that it?

A. Yes, sir.

Q. That is what I thought.

A. I beg your pardon for going into these, but sometimes—

Q. The explanation is that you simply copied the trial balances as they were presented to you?

A. Yes, sir.

Mr. Holt: These are simply the trial balances of the road itself copied by him, that is all.

The Master: He was leaving it somewhat confused, and I wanted to know what the fact was.

Mr. Holt: They are not his trial balances.

By Mr. Harrison:

Q. Now what do you show to be the construction of the road, the total construction cost, on the 31st of March, 1863?

A. $2,247,976.91, shown on Defendant's Exhibit No. 2, 1863.

By The Master:

Q. What page?

A. Page No. 4.

By Mr. Harrison:

Q. Of the blue print?

A. Of the blue print..

The Master: Of the record, is it not?

Mr. Holt: That has not been printed yet.

Mr. Lilly: I might call your attention to the printed record 10, 11, and 12, and it seems to be headed, Trial Balance, March, 1862, and continued Trial Balance, March, 1863.

The Master: That is an error that will have to be corrected. I am glad you have called attention to that.

By Mr. Harrison:

Q. Please state whether there was any incresase in the cost of construction between the dates that you have mentioned, March 31, 1859, and March 31, 1863, and if so how much.

A. $245,645,50.

Q. Then within a period of four years between March, 1859, and March, 1863, the construction account of the road had increased $245,000 and no depreciation charged off as shown by the testimony of the witness?

A. That is the correct amount of the increase, $245,645.50.

Q. And nothing charged off for depreciation, is that true?

By The Master:

Q. Well, not as far as you know, of course?

A. Not as far as I know.

The Master: Let us make more progress. You have stated half a dozen times that you had not found any information on

that, and you could answer that readily.

The Witness: Nothing has been charged off for depreciation.

The Master: The answer is that as far as you know nothing has been charged off, that is true, is it not?

Mr. Holt: The difficulty is, with the witness, that it might have been charged off in construction account.

Mr. Lilly: Or in operating expense.

Mr. Holt: In other words, his information is confined to the trial balance, not his trial balance, but the trial balance of the Richmond, Fredericksburg & Potomac Railroad, and if there is nothing charged off for depreciation he does not know anything about it.

The Witness: Then I will be allowed to answer that I do not know?

The Master: Why certainly.

The Witness: I was asked the direct question that it did not contain.

The Master: You are not obliged to make a categorical answer. You answer the question according to your understanding of the facts, that is all you are to do. Of course I knew what your answer to that question must be before you made it; that is, if it was consistent with what you had already said, which I had no doubt that it would be.

Mr. Holt: The point of the Master on that proposition, and I concurring of course, is this; Mr. Hillman is simply testifying on what he found there. He has not been keeping books for the Richmond, Fredericksburg & Potomac Railroad.

The Master: Exactly, nor has he seen their books.

Mr. Holt: It was their own trial balance that they made up.

By Mr. Harrison:

Q. Now did you look and investigate at all to see if there was any quotation, market quotation on this stock, in January, 1861?

A. No, sir, I did not.

Q. You did not?

A. No, sir.

The Master: You mean now in the stock market?

Mr. Harrison: Yes, sir, as shown by the newspapers of Richmond on that date.

Mr. Holt: Mr Harrison, I would like to get that question and answer. I did not hear it.

(Testimony read by stenographer.)

Q. I am informed, and you can at your convenience verify my information, if you desire, that on January 4, 1861, the stock of the Richmond, Fredericksburg & Potomac Railroad Company as shown by the Richmond Dispatch, the financial reports published in the Richmond Dispatch of that day, it was 76½.

The Master: Per share.

Mr. Harrison: Per share, yes, sir.

Q. Now I should like to ask you, if, in view of the facts that we have developed, namely, that $410,000 of this alleged surplus was represented in construction account of the road, and that so far as you know nothing had ever been charged off for depreciation, and that $152,000 of the surplus, the remaining part of it, was invested in stocks, notes, of which you have no knowledge whatever as to their value; and in view of the further fact, assuming that to be a fact, that this stock was quoted on the market through the newspapers of the City of Richmond on the 4th of January 1861, at seventy-six and a half dollars a share—

Mr. Holt: That is in 1863, is it?

Mr. Harrison: 1861.

Q. Are you still of the opinion that the correct value of the stock is $150 a share, as testified to by you in chief?

The Master: I do not think, brother Harrison, that that is just exactly the thing. Inadvertently it contains the assumption that he has testified that that was the value. That he has not done. He has given the book value. Your question is perfectly proper, except that it perhaps ought not to contain that

qualification. Because a little thing like that sometimes embarrasses a witness a good deal. He has given that as the book value, but I do not understand him to have given that as the actual value.

Mr. Holt: We have asked him to show the book value.

The Master: There is no confusion about it.

Mr. Holt: He has gone no farther.

The Master: I understand it exactly.

Mr. Lilly: He has shown the earning value by giving the dividend.

Mr. Harrison: If it is not a fact he can say so, that he has not testified as to value at all, but has merely undertaken to say what this trial balance shows.

The Master: But a witness ordinarily does not like to dissect a question that way. With that modification, I think the question is proper. The question is, Mr. Hillman, upon these various hypotheses suggested by Mr Harrison, what do you say is the fair actual cash value of that stock on January 1, 1861. That is what you want, is it not, Mr. Harrison? Or do you say that it was $150 a share, which is the same thing?

The Witness: I would like the question read.

(Question repeated by stenographer.)

The Master: I do not understand that Mr. Harrison intends to assume that you have testified other than you have although the concluding part of his question might lead to that inference. I do not understand you have so testified.

Mr. Holt: We do not want to be interposing formal objections.

The Master: If you object I shall insist upon the question being reframed.

Mr. Holt: We do not want to insist upon that.

The Master: My conclusion is that the concluding part of the question contains an assumption that is not borne out by the record.

(Last part of question repeated by the stenographer.)

The Master: That is the part of the question that they object to, on the ground that it contains an assumption that is not in accordance with the facts. That objection is sustained.

Mr. Harrison: I would rather not ask a question that is subject to objection. I will strike out that part of it.

Q. Please state what in your opinion as a railroad expert—

The Master: Do you withdraw the whole question?

Mr. Harrison: No.

The Master: You strike out the concluding part and add this?

Mr. Harrison: Yes.

Q. Please state what in your opinion as a railroad expert accountant the true or actual value of this stock was on January 1, 1861.

The Master: You may answer.

The Master: If you want to take the time to get together to answer that, we will suspend here for five minutes, unless you prefer to have the question answered before you suspend.

Mr. Harrison: Suppose you let him answer it.

The Master: Of course upon a question like this, which is a question of some importance, you must understand that you are at liberty to take such time as may be necessary in order to reach what in your judgment is a proper conclusion. You need not feel embarrassed about the delay. You take your own time.

The Witness: Your Honor, the question also—

Mr. Harrison: We withdraw that question.

The Master: That question is withdrawn and that colloquy is also withdrawn.

Q. If I understand your testimony, you do not undertake to testify as to the actual value or market value or true value of this railway stock as of the 1st of January, 1861; am I correct in that understanding?

A. You are, yes, sir.

Q. If I understand you correctly also, all you have done in so far as your examination is concerned was to confine your examination to the liability side of the balance sheet from which you took the amount of the outstanding capital stock and the paper surplus without paying any consideration to or taking any account of the actual value of the assets or whether the road and its intangible assets had an equal or any value

whatsoever at that period. Am I correct about that?

A. Yes, sir. I have simply determined the book value of the Richmond, Fredericksburg & Potomac Road in this case.

Q. That is not an answer to my question.

The Witness: I claim, your honor, that it is a direct answer to his question.

Q. The first part of it was. I do not know whether you intended to qualify it by the last part or not. You began by saying yes, sir. That was directly responsive.

The Master: I think he would have a right in answering a rather comprehensive question like that not only to answer categorically but to conclude his answer by such explanation that seems to him to be necessary in order to state the facts. You can follow him up with such features as you desire.

Mr. Holt: Otherwise, your honor, the witness feels as if he was in a straight jacket. He cannot testify at all if he is a man of conscience.

The Witness. There are half a dozen questions included in that.

The Master: I hold that the witness is within his rights.

Mr. Harrison: Read the question and answer and let us see if there is any difficulty about the question.

The Master: If you have not everything you want, why follow it up.

(The question and answer were repeated by the stenographer.)

The Master: I do not think the concluding part of his answer qualifies it any to amount to anything. That is practically what your question involved, book value, and he simply emphasizes by repeating it.

Mr. Harrison: I would like him to show how he arrived at that book value.

The Master: I cannot hold the witness too close on a thing of that kind.

Q. All that was necessary for you to reach the result that you have reached, which you described as a book value of this stock in January, 1861, was to know the capital stock and the paper surplus, was it not?

A. Yes, sir.

Q. Had you seen that published in the newspapers or had gotten it from any other source, it would have done just as well, would it not?

A. No, sir.

Q. Why not?

A. For the reason that it would not have been authentic.

Q. Then with that exception the result would have been the same?

A. Yes, sir.

Q. Now, will you please state what book value you give this stock on June 20, 1863?

A. 184.50 as shown upon Defendant's Exhibit No. 2, 1863, page No. 3 of that series of Exhibits.

Q. You arrived at that by following the same method that you did in 1861, for the 1861 period, did you not?

A. Yes, sir.

Q. Now, what is the amount of the surplus which you show on June 20, 1863?

A. I do not show any surplus for June 20, 1863.

Q. Well, for whatever period you show it? You show it for some period. Suppose you state that at the same time that you correct me as to the date that I directed your attention to.

A. Well, what date do you want?

Q. Whatever date you show the surplus during the year 1863.

A. March 31, 1863.

Q. What do you show it to be on that date?

A. $952,160.86.

Q. Have you undertaken to show that this 184.40 is the book value of this stock as of June 20, 1863?

A. Yes, sir.

Q. Well, on what surplus is it predicated?

A. Upon the surpluses March 31, 1863, and March 31, 1864, spacing the increase in the surplus on a time pro rated between those dates, so as to bring it up to June 20, 1863.

Q. Let us look at the assets if you please as shown on your

trial balance sheet for March, 1863, and then for March, 1864. You have stated that the surplus amounted to $952,160.86, on the 31st of March, 1863. How was that invested, in other words, what did it represent?

A. It represented the excess of the assets over the liabilities.

Q. Now, I did not ask you how you arrived at it. I asked you how it was invested.

Mr. Lilly: You asked what it represented.

The Witness: Will the stenographer please repeat the question?

Mr. Holt: Read the question and answer.

Q. I asked you how it was invested.

Mr. Holt: Let us have it from the stenographer.

Mr. Harrison: I know what I said.

Mr. Holt: I do not, and I want to hear what you said.

Mr. Harrison: I am going to state now what I said.

Mr. Holt: I would like to have the question read as it stands in the record.

The Master: Yes, the stenographer will read it.

Mr. Harrison: Yes, but I propose to exercise my privilege of saying what I wish to say.

Mr. Holt: I am asking a privilege the Master has accorded me.

The Master: You are both right.

Mr. Harrison: In my question I intended by saying what does it represent to be explanatory of my inquiry how is it invested.

Mr. Holt: I had proposed to put my own construction of your question after I had ascertained what it was.

Q. Will you tell me how it was invested?

Mr. Holt: I would like to have the question and answer read.

The Master: The stenographer will repeat the question and if Mr. Harrison wants to modify it he has a perfect right to.

(The question and answer were repeated by the stenographer.)

Question repeated as follows: Now, I did not ask you how you arrived at it. I asked you how it was invested.

A. $503,455.20 can be considered as being invested in the liquid assets, which you have called them, and $448,705.66 in cost of road.

Q. Now, the liquid assets, I see by looking at the sheet—

The Master: Page No. 4, is that right?

Mr. Harrison: Yes, sir.

The Witness: Page No. 4 of Defendant's Exhibit No. 2, 1863.

Q. —that $19,068.13 is shown to be invested in bills receivable. The character of that you know nothing about, that is correct, is it not?

A. That is correct.

Q. And that $97,181 was invested in what is described as open accounts—about that your answer would be the same, would it not, you know nothing?

A. I do not know what they were.

Q. I also observe that $193,312 was due from the Confederate Government for the transportation of freight and passengers. Do you know anything about that, and whether it was paid?

By The Master:

Q. Do you know anything about it except what appears on the trial balance?

A. Nothing except what is shown upon the trial balance sheets. Part of it was paid, from the trial balance sheets, which are on file in this case. How much I do not know.

By Mr. Harrison:

Q. Then I also notice that $22,422 of it was said to be due from the Confederate States Government for expense of reconstruction of bridges destroyed. I suppose your answer would be the same as to that, that you know nothing about it?

A. I do not know what its value was.

Q. I also observe that $24,612 of it was invested in Seaboard & Roanoke Railroad Company stock, and $38,900 in the

Potomac Steamboat stock, which we have noticed before, as to neither of those stocks you know anything of their par value?

A. I happen to know that the Seaboard & Roanoke stock is good stock.

Q. How did you happen to know that?

A. From investigations of the Seaboard Air Line Company of which this became a part, made by me a little over a year ago for the State of Florida.

By The Master:

Q. What do you mean by good stock, do you mean that it was worth par?

A. Yes, sir.

By Mr. Harrison:

Q. Do you undertake to testify in this case from your outside knowledge that in June, 1863, Seaboard & Roanoke Railroad stock was worth par?

A. Yes, sir.

Q. In gold?

A. I do not know whether in gold or not.

Q. I see $240,000 was invested in Confederate States bonds. Perhaps your outside investigation has enlightened you about that. How about it?

A. I have never investigated Confederate States bonds, and do not know what their value was.

Q. Now, I think we can get same light on that subject probably, Confederate values, on the sheet that relates to March, 1864, that enters into this computation. Looking at the securities that constitute the assets on that sheet, in which the surplus was invested, I find this item, specie bought to purchase supplies with, $500, in gold, at $30 for one, $15,000; and that to purchase $5.02 in silver it took $22 for $1, or $110.14 to buy $5.02 worth.

The Master: That beats 16 to 1.

Mr. Harrison: Yes, I believe it is even worse than that.

(Question not answered.)

Q. Why did you carry in a column in order to base value

upon in March, 1864, $15,110.14 which only represented as shown by your statement, $505.02 of actual value, of real money?

A. Because this is a copy of the trial balance of the company, it was so stated by them.

Q. Then you could see, could you not, whether the books contained those figures or not, that that so-called book value was based in part on $15,110 that possessed at that time only $505.02 of real value?

A. I had noted that fact, that the gold and silver were both at a heavy premium.

Q. Your surplus of 1864 also seems to contain about $333,000 of Confederate State bonds, does it not?

A. Yes, sir.

Q. So the surplus then for the year 1863 and 1864, the liquid part of it, as we are calling it, was represented by Confederate values, was it not?

A. Yes, sir; there were a large proportion of them in Confederate bonds.

Q. It has been proved in this record, in the original record, and has never been questioned therein, that the only medium of exchange, the only currency in Virginia in 1863 was Confederate currency and that all values were measured by that currency. If that is true then Confederate values would be the test of the value of all of the assets in June, 1863, which constitute the paper surplus as shown on your exhibit, would it not?

A. If that is true, yes sir.

Mr. Holt: Now, Mr. Harrison, the exhibit, as you have suspended for a moment, last referred to is what, please?

Mr. Harrison: I have been using two exhibits.

The Master: Page No. 5. The last exhibit that has been examined from is page No. 5 of Defendant's Exhibit No. 2 1863.

Mr. Holt: 1863?

The Master: Yes.

Mr. Harrison: I am dealing with 1863 and 1864.

Mr. Holt: I wanted to ask at a time that my question would not break into your question.

The Master: I am not certain but that you will find something in the Master's report on the question of basing values on Confederate currency.

Mr. Harrison: So it is. I said the original record; I did not specify your report.

Mr. Holt: All of which, if I may be permitted to say so, shows the utter futility of going to the date of June 20, 1863, the chief value of our exhibits on that subject.

The Master: A little preliminary argumentative suggestion.

Mr. Holt: Yes, sir.

Mr. Harrison: We certainly agree with you in that view.

Mr. Holt: Yes, but that is the year you are claiming on.

The Master: It may be if you both agree that no values are to be determined upon the hypothesis of June 20, 1863, we can eliminate all these matters upon either side appearing on that date.

Mr. Holt: Even on that we can overleap the allegations of our answer.

The Master: I do not think you are bound by the alternative allegations of your answer.

Mr. Holt: Oh, no.

The Master: It is a quite familiar practice that we throw out all the anchors to windward that we can think about. While they are conferring, I think Attorney General Lilly called attention to the fact that there is an apparent error here in the exhibit printing on page 12. Page 10 and page 11 start with what purports to be the trial balance March 31, 1862, and the last line on page 11 says carried forward, etc., and the next page is apparently a continuation, but it is headed trial balance March 31, 1863. I suppose that must be 1862.

Mr. Hogg: Evidently.

The Master: See that that is corrected. I think we called attention to this before, and that is what I wanted Mr. Harris to have in mind, to see that that 3 is stricken out and 2 inserted in its place. It has given me about twenty-five minutes work sitting here to figure that out.

The Master: Mr Harris, page 12 should read Trial Balance

1862 instead of 1863. An error like that in the print is extremely annoying.

Mr. Hogg: It looks as though it might be a misplaced page.

Mr. Harrison: If your Honor please, I am ready to go on with another subject.

The Master: Class C?

Mr. Harrison: No.

The Master: Another item under Class B?

Mr. Harrison: They skipped Class C and Class D and went to Class E.

The Master: But in the print, the print will show that the whole thing went along in its regular order. As a matter of convenience we did skip. But I do not care to have that skipping done now, because it is important to have it in chronological order.

Mr. Holt: We did it because we did not have the blue prints.

The Master: We did it as the result of an understanding, but the understanding was that when the case was printed it should be printed in its chronological order, and it is so printed. And for that reason, unless it would subject you to embarrassment, I would follow the chronological order. You are right in your suggestion that that is what was done. But the printed record will show that the record went along in chronological order. Before you go to another subject, I want to make this inquiry. Is there any question raised as to the accuracy of any of the items found in Defendant's Exhibit No. 1, page 1, of the printed record? That is, is the accuracy of the figures conceded, or is there any contest about them?

Mr. Harrison: I think we are in agreement on that subject.

The Master: I understand they do not agree with some of the other statements in the original case. But what I want to know now is whether any question is now raised as to the accuracy of these computations made by Mr. Hillman, and if so what is the question, and what is the item.

Mr. Harrison: No question.

The Master: Then that takes care of these. Now I would like to make the same inquiry as to Class B. These concessions

of course do not concede that they prove anything, they simply state that the items as stated, are correctly stated. Now the question is, is there any objection made as to the items that appear in Mr. Hillman's computation as to Class B.

Mr. Lilly: As to accuracy?

The Master: Yes, as to the accuracy of the computations and the amounts.

Mr. Holt: As to the Richmond, Fredericksburg & Potomac road?

The Master: Yes.

Mr. Harrison: I understand that is so.

Mr. Holt: We are to understand from that then that Mr. Potter, their accountant, has checked not only the figures covering Class A, but Class B also, and has found them to be correct, for whatever they may be worth.

The Master: That is correct as I understand it. So that that cleans that up as we go along.

Mr. Holt: This admission I suppose applies not only to schedules covering Classes A and B for 1861, but for 1863, as well, because they have been carrying in their cross-examination the two sets of schedules together.

The Master: Do you hear that suggestion, brother Harrison?

Mr. Harrison: Sir?

The Master: Judge Holt's inquiry is whether that concession applies to parallel schedules relating to Classes A and B predicated upon June 20, 1863; and I suppose it does.

Mr. Harrison: I think so.

The Master: So that takes care of the accuracy of the details for the amounts stated for 1861 and 1863.

Mr. Lilly: That is making progress.

Mr. Holt: That is real progress.

The Master: Well, we know where we are. I prefer, brother Harrison, to have you take a little extra time to have you go along in the chronological order.

Mr. Harrison: I find I can go right on now. I find I have omitted one or two quesstions.

Q. Please state, in order that I may have it conveniently

before me in the record, what you show the value of the capital stock of the Richmond, Fredericksburg & Potomac to be at $184.50 a share in June, June 20, 1863—what does it amount to, the capital stock held by the State of Virginia?

A. $507,744, as shown on Defendant's Exhibit No. 2, 1863, page 3 of those exhibits.

Q. That you carried into your second item on page 51 of your exhibits of summary of claims of West Virginia, did you not?

A. Yes, sir.

Q. In other words, that you have treated as furnishing the basis of a claim of actual value on behalf of West Virginia, have you not?

A. Yes, sir.

Mr. Harrison: I find some of the original documents which we have sent for have not been sent over, and I am not prepared to go on at once.

The Master: I think in the interest of having the record harmonious that it is better to suspend here. When do you want to come in, at two or half past two?

Mr. Harrison: Two I should say.

The Master: Then we will suspend here until two o'clock, because I think it is infinitely preferable to take this up in chronological order.

Recess until 2 P. M.

AFTER RECESS

Continuation of the cross-examination of

CONWAY W. HILLMAN.

By Mr. Harrison:

Q. I will take up now, next in order, the Orange & Alexandria Railroad, being the first item on the statement designated as Class C, Asset 1, Hillman Exhibit 3-A, being Defendant's Exhibit No. 3. You state under the caption par of stock of the Orange & Alexandria Railroad Company for September 30,

1856, $1,457,000. Please state whether that is the stock, the amount of the stock subscribed or the amount paid in?

The Master: Paid in and issued you mean?

Mr. Harrison: Yes.

A. That is the total amount of the subscribed stock.

Q. Where did you take that item from?

A. From general balance sheet, Orange & Alexandria Railroad Company, of September 30, 1856, as expressed on pages 946 and 947 of Document 17, report of the State of Virginia.

Q. By a reference to that document, No. 17, at page 947, I find the total amount of the stock paid in stated to be—I mean subscribed—to be $1,457,500.

The Master: What do you refer to now, brother Harrison?

Mr. Harrison: Do not take this down.

Q. There is then a discrepancy in the figures shown by you purporting to be taken from this document and the figures as shown in the document, is there not?

A. Yes, sir. My original notes show $1,457,500 and it has been transcribed as $1,457,000 even, and the error has not been discovered in checking over the par of the stock.

The Master: Do you concede that that item should be corrected by adding $500 to it?

The Witness: Yes, sir. The computation where the book value is shown immediately below is however made on the basis of the $1,457,500.

Mr. Holt: The correct amount?

The Witness: Yes, sir.

Mr. Holt: I would like to inquire right there, your Honor, if it is not inappropriate, whether or not Mr. Potter when he would check over with Mr. Hillman, if he would discover a discrepancy, if he would call it to Mr. Hillman's attention.

Mr. Potter: I did not check these over with Mr. Hillman.

Mr. Holt: Did you check them over with yourself.

Mr. Harrison: I have had him helping me on this.

Mr. Holt: I supposed it was a sort of mutual exchange of checks back and forth.

Mr. Harrison: No; no mutual exchange of checks back and forth when it comes to material errors.

The Master: The answer to the present inquiry is that Mr. Potter did not check this one up with Mr. Hillman, as I understand it; but Judge Holt's suggestion was that if he did check up and found there were errors, at the time he found them did he call Mr. Hillman's attention to them.

Mr. Holt: Did they try to get together, which was the understanding.

The Master: Yes, that was the understanding; if there were any errors observed they were to try to get together if they could.

Q. Will you please tell me whether you took as the basis for the par of the stock for the years 1857, 1858 and 1859 the amount subscribed as you did in the case of 1856?

A. Yes, sir, I took the amount subscribed.

Q. Now, in case of the years 1860 and 1861 did you take as a basis for the par of the stock the amount subscribed—for the year 1860, I mean, did you take as the basis for the par of the stock subscribed, as you did in the four years previous, or the amount paid in?

The Master: The cross-examination is directed to the exhibit found on pages 14 and 15 of the printed record.

A. The amount paid in.

Q. Why did you take a different basis for the years 1856, 1857, 1858 and 1859 from the basis you took for the years 1860 and 1861 for the par of stock?

A. I do not know, sir.

Q. Which is right?

A. The amount paid in.

Q. Then if you were right for the years 1860 and 1861 you were wrong in your basis for the years 1856, 1857, 1858 and 1859?

A. Yes, sir.

Q. Does this not change the basis on which you figured your so-called book value?

A. It would change the basis for 1857, 1858 and 1859; the unpaid subscriptions being $48,048.58.

By The Master:

Q. The unpaid subscriptions?

A. Yes, sir.

Q. For what year?

A. For 1857, being $48,048.58, for 1858, $45,169.10, for 1859, $44,059.63.

Q. That does not appear on the exhibit?

A. No, sir. It was to show the amount of the statements if it should be questioned.

By Mr. Harrison:

Q. I find you have on your exhibit a caption headed profit—I mean a caption, profit, and underneath the figures $7,571.28. What is your authority for writing the word profit above that, above those figures?

A. For the reason that it is so shown on the trial balance of the Orange & Alexandria Railroad September 30, 1856.

Q. Now, will you look at the volume and see if you are correct about that. What is the caption there, or designation of those figures?

A. Profit and loss account.

Q. Then you have no authority for writing the word profit above and designating that as a profit for that year?

A. Certainly, sir.

Q. What is it?

A. Because it on the side of the account where it would be necessary to have a profit in order to balance the accounts.

Q. I ask you, is that the profit for that year or the accumulated profit up to that time.

A. That is the accumulated profit up to that time.

Q. Does the report of the president of the road for that year show any net earnings of the company for the past year?

The Master: That is, does the trial balance show any net earnings, is that what you mean?

Mr. Harrison: No; does the president's report show.

The Master: It is the report you are examining from?

Mr. Harrison: Yes.

The Master: The question is whether that shows any net earnings for the year preceding September 30, 1856.

A. I could not say; I did not examine it.

Q. I find that he states in his report in this document that you qoute from as follows: "The net earnings of the road over its working expenses proper for the half year amount to sum of $138,822.22." You did not discover that, you say?

A. I did not look for it and therefore did not discover it.

Q. What were you looking for?

A. The profit and loss account as shown upon the trial balance of the company, 1856, September 30.

Q. You show under the caption of book value the value of this stock January 1, 1861, to be $106.64.

The Master: That stock as a matter of fact was $50 par value?

Mr. Harrison: $50 par value I think, yes, sir.

Q. Now, will you tell me on what that book value is based.

A. It was based upon the profits of the profit and loss account as shown upon the trial balance sheet of September 30, 1856, plus the profits of operation above interest, taxes and dividends declared as far as we could determine them from the annual reports of this company made to the State of Virginia, adding in for each year the profit so shown to the last available profit as shown by the trial balance of the company, September 30, 1856.

Q. Then it is based on income and expenses, is it not?

A. Yes, sir.

Q. I thought you testified heretofore that a book value should be based on assets and liabilities. How then could you base a book value on income and expenses and arrive at a just or correct result?

A. For the reason that there does not to my knowledge exist any trial balance of the Orange & Alexandria Railroad subsequent to the one that I have mentioned, September 30, 1856, from which the profit and loss account or the assets and liabilities could be correctly made up, and that therefore the only method left was to add to the last determined profit the successive operating profits above interest, taxes and dividends for each year, and thus arrive at what might be considered the surplus or the amount to be divided among the stockholders.

Q. Then, if I understand you, you did not possess the data upon which to arrive correctly at the book value of the stock, is that right?

A. Yes, sir.

Q. Can you give us any information as to what constituted the investments of this road upon which this alleged book value was based?

A. At what date, may I ask?

Q. I will say the date to which your testimony has related January, 1861.

A. I could do so approximately, yes, sir.

Q. From what source would you draw that information?

A. From the Document 17—

Q. Just say the same document.

A. From the same document, 1860.

Q. No. 17?

A. Yes.

Q. Does that show anything further than the construction account and the cost of maintenance and operating expenses and so on?

A. Yes, sir, it shows other items.

Q. Well, suppose you mention some of them that constitute investments of the alleged surplus of the company.

A. May I preface that by the statement that the trial balance is not quite complete, but that it can be made to correspond quite closely with the figures that I have used. The cost of the road, as shown, is $5,097,577.21. Miscellaneous items, not specified—

Q. What table is that you are reading from?

A. This is on page 19 of this record of the State. Miscellaneous items, $26,827.61; wharf and other property, $60,730.40; stock of the company, subject to redemption, $69,515; on page 38 I find a further item, cash and other material, amounting to $72,793; giving us a total on the asset side of our account of $5,327,443.22. On the other side of the account, that is the liabilities, we have the paid in capital stock of $2,039,603.73; a bonded indebtedness of $2,517,500; a floating debt of $631,756.98; making a total on the liability side out of the balance

sheet, if it could be completed, of $5,188,850.71. The difference between these two sides of the account would be $138,592.51, which would represent the profit and loss account at this date, had we been able to obtain every other item in the assets and liabilities; but to put it a little differently, if the items which we have mentioned include all the other assets and liabilities of this company. The amount which I have used as a dividend in order to determine the book value of this road is $135,495.49.

By The Master:

Q. You say you used as a dividend, don't you mean used as a profit?

A. Yes, sir, used as a profit.

Q. Do not get it confused in that way, because it was not a dividend at all, you used it as a profit and you assumed that that would have gone into the surplus account?

A. Yes, sir.

Q. If the trial balance had been completed, am I right about that?

A. Yes, sir.

The Master: Now be careful about that, because dividends are sifted all through the record as dividends, but this is not a dividend at all.

The Witness: A difference between the amount which would be shown by the asset and liability side of the account if they had all been correctly stated and of the amount which I have arrived at by my computations of $3,097.02, the figures which I have used being that much less than those shown above.

The Master: That much less than the discrepancy?

The Witness: Yes, sir.

Q. You have no evidence of the value of this stock except this printed report found in Board of Public Works bound printed volume, Document No. 17 to which you have been referring?

A. No, sir, I have no other information on this subject.

Q. And any testimony you have given or exhibits you have filed relating to value as of the period in question, January 1, 1861, is based upon what you have found there?

A. Yes, sir.

Mr. Holt: May I ask a question there. Does that bound volume show the dividends paid on the stock of that road?

The Witness: Yes, sir, it does.

Q. Please state if the result you obtained in respect to the value of this stock in June 1863, page No. 8—

The Master: Page No. 8 what?

Mr. Harrison: Page No. 8, Class C.

The Master: You mean of the exhibits of 1863?

Mr. Harrison: Yes, sir.

The Master: Be careful and indicate.

A. The result shows a surplus on September 30, 1863, of $705,298.40 profit, a book value of 134.25. This is shown on Defendant's Exhibit No. 3, Asset No. 1, 1863, page No. 8.

Q. It seems to have increased, this value, from 1861 to 1863 from $106.64 per share to $134.25 per share or a difference of $27.61 per share; is that correct?

A. Yes, sir, excepting the date was 1860 instead of 1861.

Q. Did you examine the President's report and the Engineer's report found in this Document No. 17 relating to this road in 1861, the report of 1861, showing the condition of the road?

A. Yes, sir, I read it over.

Q. Did you observe that the President reported that sections of the track had been destroyed and bridges burnt from Cameron to Bull Run, a distance of 22 miles?

A. Yes, sir.

Q. What is the total mileage of the road, or was?

The Master: Upon which these reports are predicated.

A. I did not look at that, but my recollection is it is about 72 miles.

Q. What?

A. My recollection is about 72 miles, I couldn't tell you though because I don't know.

The Master: About thirty per cent. had been destroyed.

Mr. Holt: That is the bridges on thirty per cent.

The Witness: Your Honor, the mileage will be mentioned on these reports.

The Master: I presume the result of that would be that on about thirty per cent. of the road the bridges had been destroyed and the track had been torn up.

Mr. Lilly: Did it say all the track had been torn up?

Mr. Holt: Bridges destroyed between those two points.

Mr. Harrsion: I am going to file these two reports.

The Master: While they are looking that up, inasmuch as General Anderson is here, and Professor Hogg, what I want to find out is what changes if any are necessary in this print, so far as it has been made.

Mr. Hogg: None that we have observed, and we have gone over it carefully.

Mr. Harrison: None:

Mr. Hogg: I want to ask one question of Mr. Hillman in relation to the record.

The Master: You may ask it now.

By Mr. Hogg:

Q. On page 2 of the exhibits of 1861. I understand that is page 184, ledger B, Internal Improvement Fund, instead of ledger B, Second Auditor's office. Is that right or is it correct as it is?

A. Your Honor, what is called to my attention is merely the change of a page from 17 to 184, which my assistant informs me is correct.

By The Master:

Q. That is, instead of reading page 17, ledger B, it should be page 184?

A. Yes, sir.

The Master: Well, that is all right, that change will be made.

Mr. Holt: I wanted to get whether that was the report of the destruction of bridges between two points or of the entire road between two points.

The Master: I understood the extract to read in substance that the track had been destroyed and the bridges had been burned over a distance of about twenty-two miles of the road.

Mr. Holt: Its earnings kept increasing all the time, so that there must have been some track left there.

The Master: That is a matter of argument, of course.

Mr. Holt: That is why I am asking the question. You get one idea and I get another.

The Master: Just read the extract, please.

Mr. Harrison: I am going to put it all in; I do not want to stop to read it.

The Master: Read the extract.

Mr. Harrison: They are talking about the evacuation of Alexandria by the State Troops. "Sections of the track were destroyed and the bridges were burned from Cameron to Bull Run, and twenty-two miles of the railroad in the direction nearest Alexandria surrendered to the control of the enemy or rendered useless to the company. After the battle of the 21st of July the streams between Manassas and Fairfax Station were temporarily bridged again by order of our military authorities for the use of the army only. And recently this part of the line has been again abandoned. This together with the loss of the workshops and their furniture and other property, unavoidably left behind in Alexandria, will constitute a large amount, which in justice at the proper time ought to be paid by the State or the Confederate Government to the stockholders of the company."

Mr. Holt: Now, the date of that, Mr. Harrison, please?

Mr. Harrison: The president's report does not bear date, but he refers in his report to the superintendent's report, which is transmitted along with his own report, and the superintendent's report bears date November 5, 1861.

Mr. Holt: November 5, 1861?

Mr. Harrison: Yes.

By Mr. Harrison:

Q. I further observe in this report of the president that he states that about 122 miles of the main line and the branch to Warrenton are in operation, so you must have been mistaken when you gave the total length of the road at 70 miles.

A. If you recall, I gave it simply as my recollection, that

I had not looked it up, and stated that you having books there I would accept any length that you gave.

Mr. Harrison: The road extended from Alexandria as far as Lynchburg.

Mr. Holt: We have gotten the only fact we inquired of and wanted to know, which was what you stated a moment ago about the destruction between two points twenty miles. I thought it related to the bridges alone, and you have read the point that covers my question. Now, we do not want further to interrupt your examination, and if that is to be read in the record, read it in proper order.

Q. I observe also in this report that the president states that among the assets of the company, in fact he states them thus, I will give the three items, he gives as the indebtedness, total funded debt $2,609,000; total temporary debt $572,673. Against these indebtednesses the actual resources of the company may be stated as follows: Cash in bank, $40,637.42; due by the government, $161,903.72; freight bills and accounts due by the Post Office Department and Express Company, $22,183.38, making a total of resources against the indebtedness just stated of $224,724. The president adds to this that individual subscriptions of stock included $23,437.09, and mortgage bonds of the several issues either by hypothecation as collarteral security or on hand and unsold, $691,000. Of this last, all are of the last issue except $73,000. The new issue of mortgage bonds to the amount of $700,000 authorized by the last meeting of the stockholders to pay off the heavy existing floating debt of the company has been duly prepared and only a small amount so far disposed of. The company has paid up all the interest due upon these bonds of the several issues where the coupons have been presented except that part held at the north, the payment of which was arrested by Act of Congress and public policy.

Now, I wish to read for your benefit as a foundation for the question an extract from the report of the—

Mr. Holt: Is that intended as the basis of a question or are you reading at this point this report into the record?

Mr. Harrison: I am reading such extracts as I am into the record, and expect to use them in the examination of the witness. I expect to follow up both of these reports.

Mr. Holt: When you have cross-examined and you have your case in chief. You started out by calling the attention of the witness to three items as I thought.

Mr. Harrison: My dear sir, I am going to conduct the examination with as due regard to time and the proprieties as I know how to. I am laying the foundation for the examination of this witness.

Mr. Holt: Then you are introducing that in chief for the purpose of cross-examining him upon your own evidence I presume. Is that your idea of propriety?

Mr. Harrison: I do not think you and I would differ upon that score at all, Judge.

Mr. Holt: I did not suppose we would.

Q. Have you read the report of the engineer?

A. I have read those reports, yes, sir.

Q. Then you are familiar with the contents of these reports?

A. I cannot say that I can recall them without reference to them.

Q. My purpose now is to refresh your memory. The engineer says in his report "that it is not possible for me to make a detailed report of operations of this road in my department or to give you the aggregate working expenses owing to the fact that my books showing this information from the 1st of October, 1860, to the 1st of May, 1861, are not in my possession. I can only estimate them from my recollection and by the operation since May for information in a general way."

Mr. Holt: What is the date of the engineer's report?

Mr. Harrison: November 5, 1861.

Q. (Continuing) In speaking of the condition of his road he says, "We have 16 locomotives belonging to us. One of them was undergoing repairs in the machine shop at Alexandria at the time of the invasion and was in such condition that it could not be removed. Another, the Fairfax, was regarded only valuable as old iron, and a third, the F————, though brought out of Alexandria, has been of no service owing to her light weight and general uselessness, so that we have 13 locomotives in actual use, and at this time they are all in

running order. Since the 17th of April these engines mostly have been without shelter and dependent upon a lathe and blacksmith's forge for repairs. It seems almost that they felt it to be their duty to keep themselves in order for the occasion, though much credit is due to those connected with the machinery and the running department for their skill and watchfulness. The road department has not been placed in as complete a condition as it would have been had we been able to supply ourselves with iron rails and ties. But I consider it in good order, and with materials on hand and procurable can keep it so." Great credit and praise is due the men under him for the hardships that they have endured, and so on. Now, you have shown a remarkable increase in the value of this stock, paper increase, between 1861 and 1863, an increase of some $27 a share by June 20, 1863. In view of the condition of this road as shown by the president's report, in November, 1861 and the conditions that existed from that time in Virginia continuously to and including June 20, 1863, and the large indebtedness shown by the president's report, bonded indebtedness, gold obligations, resting upon the road, would you say that there is any basis whatsoever upon which to found this paper increase in the value of the stock?

A. Yes, sir.

Q. What is it?

A. That the road, in spite of the fact of its supposed partial destruction, was in such a condition that it was earning heavily and with most remarkable facility each year, showing that as an operating tool its utility had not been materially lessened even by the destruction, and that its earning capacity was large and increasing.

The Master : Just one moment. Mr. Harris, with the exception of changing upon page 2 of the Defendant's Exhibit the figures 17 to 184, this record is conceded to be correct.

Mr. Hogg: With the corrections already made.

The Master: Yes, with the corrections that you have already made. Now call the attention of the printer to that page. When that is done you tell the printer to strike off his hundred copies, and he can distribute his type, and ask him

to hurry along with his exhibits relating to 1863, because we would like to have those as soon as we can get them.

Mr. Lilly: What is you Honor's idea about how you will number these schedules of 1863? You see we may have some more schedules on 1861.

The Master: I would call them 1863 schedules. We are already going to have on this print at the head class so and so, 1861.

Mr. Hogg : At the head of the page?

The Master: Yes.

Mr. Holt: We can take care of that.

The Master: That will appear right at the head of the page, class so and so, 1861, and when we come to 1863, it will be class so and so, 1863.

Q. Were not the chief resources of this road, so far as document No. 17 shows, upon which you rely, amounts due by the Confederate Government for the transportation of troops? I am referring to the period now between 1861 and 1863.

A. I do not know, sir.

Q. I just called your attention to document No. 17, the president's report, wherein he gives a total of $224,724 of resources in November, 1861, of which $161,903 was due by the Confederate Government. Does not that represent considerably the larger part of the resources, as shown by this volume?

A. No, sir, I think not.

Q. Well, will you state what else?

A. I have not had an opportunity to examine document No. 17.

Q. (Handing book.) I will hand it to you and ask you to do so now. I am referring now to the actual resources as shown by the report of the president of the road. If you have not had a chance to examine the report why did you say that there were other resources than those that I have stated?

A. For the simple reason that you had stated in your report that there were some $2,242,845.65 worth of stock of road equipment stated by your president and also that they had cash in bank of $40,637,42; so, necessarily, from your own

statement there must have been a large amount of other assets.

Q. I confine my question to the resources that that road derived during that period, my question was if the report of the president did not show that the larger part of the resources consisted in the amount due by the government to the road, the total amount as shown by his report being $224,000, including the cash in banks which you have just referred to. I mean free resources, I am not talking about the cost of the road.

The Master: You mean available resources?

Mr. Harrison: Available resources. I am not asking now what the road cost.

The Master: You are distinguishing resources from assets.

Mr. Holt: Does it mean income by that, or accumulated income or what?

Mr. Harrison: I will examine the witness.

Mr. Holt: I did not know what it meant, and that is why I asked the question.

The witness: In addition to the $224,724.52 which you have mentioned, the president also mentions upon the same page, 36, document 17, that to this add individual subscriptions of stock uncollected, $23,437.09, mortgage bonds, of several issues, either hypothecated as collateral security or on hand and unsold, $691,000; which would indicate considerably more liquid resources than you have mentioned.

Q. Let me have the book, if you have finished.

A. Yes.

Q. You have given it as your opinion that the condition of this road as shown by the president's report, and the conditions prevailing in Virginia during the period about which we are inquiring when war was raging, did not affect the value of this stock or the earning capacity of the road because it appears that its dividends steadily increased. I have not asked you anything about that—

Mr. Holt: I do not think the witness made that statement.

Mr. Harrison: Just let me ask my question, if your Honor please.

The Master : Let Brother Harrison complete his question,

and then if Judge Holt has any criticism to make I will hear it.

Mr. Harrison: I would greatly prefer that. If there is any ground of objection to any question I ask, let the objection be stated; but I think I should be allowed to state the question without interruption.

The Master: We rather got the impression that you had concluded your question, and I must say that I got the same impression, but we were both wrong. You are entitled to finish your question, and if there is any criticism to be made of it I will hear Judge Holt.

Q. I have not asked you anything about the cost of the construction of the road or its bond issue, all of which I have myself read in full, but I did ask you—

The Master: You are going to complete your question now?

Mr. Harrison: Yes, sir.

Q. And I now repeat, if it does not appear from the president's report, which is the only source of information, it seems, you have had on this subject, or that any of us have for the present for that year, shows that the larger amounts of the resources of the road, the earnings of the road, the cash that it received, whether it received it or not, that the larger amount of the resources, as the president himself describes it, consisted of an amount due by the government.

The Master: The Confederate Government?

Mr. Harrison: Yes, sir.

Q. That amount being $161.903 out of a total of $224,000 as shown by him, to which may be added $23,000 of individual subscriptions that were uncollected, but that is not earnings of the road.

The Master: That follows from your characterization of the president's report.

Q. Now I ask again if it is not true that the road was dependent for its earnings largely, as shown by this report, upon what it earned from the government.

A. That is impossible to say. Their earnings that year were $604,025.44, very much in excess of the previous year. Whether or not all of that, or more than the one hundred and

sixty odd thousand which you have mentioned, was due from the Confederate Government I cannot say.

Q. I see you have now turned to the engineer's report in answer to my last question, and I will ask you to look at it again. He there is making an estimate, he said, of what the earnings of the road were, in the absence of the books, being unable to do more than that. And I observe he states the receipts from passengers to be $206,668, does he not?

A. I don't know, sir, without reference to the book, as to what passengers would be.

Q. What did you refer to just now when you stated the total resources of the road?

A. From a memorandum which I had taken off of the total earnings of the road.

Q. Then you did not refer to the report itself. Where did you get that memorandum from?

A From that book.

Q. From what part of the book?

A. Document No. 17.

Q. From what part of Document No. 17.

A. I cannot give you the page without seeing the document; I cannot carry those in my head.

Q. Suppose you look at that and tell me. You know you took it from the superintendent's report, don't you.

Mr. Holt: You said the engineer a moment ago.

Mr. Harrison: Well, engineer and superintendent, that is what he is called; it is the same thing.

The Master: It is interchangeable.

Mr. Harrison: Yes, sir.

The Master: I am very glad to learn that, because I got the impression there were three reports, and on the contrary, there were only two.

Q. Have you a reference to the book in your memorandum, the page?

A. Yes, sir, page 54, Document 17. It reads table H, earnings, receipts and payments from passengers $401,494.20; from freight, $159,241.77; from mail, $28,709.12; from other sources, $14,580.35; total $604,025.44.

Q. How does that total compare with the total given by the engineer and superintendent in his report?

A. The same.

Q. Now, the engineer has itemized those items, hasn't he?

A. Yes, sir.

Q. Suppose you read them.

A. From passengers, $206,668.85; from government troops, $194,520.35; from government freight, $67,104.34; individual freight, $92,137.43; United States mail, $22,600.79; Confederate States mail, $6,108.33; Southern Express, $7,071.33; Adams Express, $6,846.95; News agency, $305.00; Telegraph, $662,07; total $604,025.44.

Q. The largest items then in this list of receipts shown by the engineer and superintendent on November, 1861, are the two items of $194,520 and $67,104, are they not?

A. No, sir.

Q. What are the others?

A. Passenger receipts, immediately above that, $206,668.85, and receipts from other freight, below that—

The Master: Does that aggregate all show receipts or is it an aggregate of earnings a part of which have not been received? I see there is an item there of one hundred and sixty odd thousand dollars apparently still due from the Confederate Government and I was wondering whether that was in the earnings.

The Witness: Your Honor, supposing I finish my answer without the interpolation.

The Master: Yes.

A. (Continuing.) Which amount I am not able to state without looking at it on the record, but which will amount to more than the receipts from the transportation of government troops and supplies.

Q. What amount was received as shown by this list from the government? Give me the aggregate of those two items.

A. $261,624.66.

Q. From passengers there was received $206,668, and from freight, $67,104. Those are separate items, but even if they are added together, what do they aggregate, the two?

A. $273,772.85.

Q. What is the difference then between the total passenger and freight receipts and the following items received as shown from the Confederate Government? I will leave out the United States Government—$194,520; $67,104, government freight; $6,108.33 Confederate mail, what is the aggregate of those three items?

A. Will you kindly give me United States mail to go on the other side of the account?

The Master: He has not asked you about that.

Q. Will you kindly answer my question.

The Master: You are anticipating, Mr. Hillman. That does not answer his question. He is asking you the aggregate of these three items; that is all you are called upon to give now. What is the aggregate?

The Witness: $267,732.99.

The Master: That cleans that up.

The Witness: May I be allowed to make a statement?

The Master: If it is responsive to any question that Mr. Harrison has put and explanatory of any answer you have made.

The Witness: It is explanatory.

The Master: If the character of it is right and proper for you to make.

The Witness: It seems so to me; that in the item which I have given of passengers and freight outside of the Confederate Government I have not included the Union, the United States mail, while it is included in the sum which I have given in response to Mr. Harrison's question as the amount.

The Master: That is perfectly obvious from the examination; there is no question about that. You want me to tell you about this particular thing. That is not legitimately explanatory of your answer. I know what you have in mind and you know what the counsel has in his mind, and I appreciate the whole situation, but as a matter of fact that is not an explanation of any answer you have given. It is an argumentative suggestion, perfectly proper from one point of view, but you need not bother yourself about that. The gentlemen sitting at the end of the table will take care of anything of that kind that you want taken care of.

The Witness: Then, will your Honor have the entire matter stricken out.

The Master: You need not have the slightest embarrassment about it, but everything of that kind these people over here will keep watch of, and if there is anything to take care of they will take care of it. There is not the slightest harm in this instance, not the slightest.

The Witness: Will it be stricken out of the record then?

The Master: I do not care whether it goes out or not. If the West Virginia people want it out, let it go out.

Mr. Lilly: Let it stay in. It helps balance.

The Master: Judge Holt and the Attorney General are sitting over here keeping watch of this, and if there is anything dropped in or dropped out that they think wants to be taken care of, it is up to them to attend to it. I would not bother with it if I were you, let them take care of it.

Q. You show on your schedule then as what you call value, book value I presume it is, of this stock, January, 1861, the stock owned by the State on January 1, 1861, at $106.64 a share, aggregating $932,566.

A. Yes, sir.

Q. And the aggregate amount is $932,566?

A. Yes, sir.

Q. You carried that amount into your summary of West Virginia's claim against Virginia, did you not, for 1861?

A. Yes, sir, of items which should be considered in that claim.

Q. As constituting the value of that item as the basis for her claims, is that true or not?

A. Yes, sir.

Q. Did you intend that in that connection to be accepted as its true or actual value or are you to be understood now as you testified before recess that you are not undertaking to express any opinion or to give any testimony as to actual value?

A. I put that in there as being what I considered the book value of the stock and not as expressing an opinion as to whether it should be considered as the actual value.

The Master: We will suspend here for five minutes, but before we actually suspend, my attention has been called to the fact that Monday is Labor Day, and then I have in mind the further fact that I suppose most of us in practice are in the habit of having one-half day off Saturday. Everybody at my office takes a holiday Saturday afternoon whether I do or not. I simply wanted to have a little understanding now if I could as to just what we will do in relation to that. So far as I am concerned, I will sit all day Saturday just as we are doing today, and I will also sit Labor Day provided it is agreeable to all concerned.

Mr. Harrison: Entirely agreeable to us.

The Master: Of course you understand that I am consulting the convenience of everybody, but we all want to get through just as fast as we can, so unless there is some objection we will sit all day tomorrow and also sit on Monday precisely the same notwithstanding the fact it is Labor Day, and if there is any public holiday here under which these rooms will be closed on Labor Day I would expect the Attorney General of Virginia or someone representing Virginia to see that this room is kept open for us. Is that agreeable to all concerned?

Mr. Lilly: That is all right for us.

Mr. Hogg: It is very agreeable to this side.

Mr. Harrison: It is entirely agreeable to us.

Mr. Holt: May I at this time, your Honor, ask Mr. Hillman a question, so as not to break in on Mr. Harrison when he starts? It is relevant to this same matter.

The Master: Certainly.

By Mr. Holt:

Q. I will ask you, Mr. Hillman, whether or not in your schedules you considered the earnings of the Orange & Alexandria Railroad Company at all for the year 1861.

A. No, sir, I did not, as is shown on Defendant's Exhibit No. 3, 1863, Asset 1, page No. 8.

By Mr. Harrison:

Q. Did I understand you to say that you based your in-

creased values in 1863 on the earnings, in part, the accumulated earnings?

A. Yes, sir, on the accumulated net earnings, meaning by that above all of the operating expenses, interest charges and taxes.

Mr. Holt: What I referred to, Mr. Harrison, was a note on that schedule itself, where that statement is made really. It speaks for itself as a matter of fact.

Q. Where did you get the data from upon which this exhibit is based?

The Master: Do you mean page 8, Brother Harrison?

Mr. Harrison: Yes, page 8.

Q. Is it shown on the exhibit itself? This statement is compiled from a report of the Board of Public Works which you found in the City of Washington, is that correct?

A. Yes, sir, in the Congressional Library at Washington.

Q. Who examined that book and took off the report?

A. Mr. Bray.

The Master: Now, you have developed that fact, and I make this suggestion. Of course I do not know how far the counsel for Virginia may want to follow it, but if they have occasion to pursue the examination of Mr. Bray I would expect the other side to keep Mr. Bray in attendance so that there would not be any delay.

Mr. Holt: He is right here.

The Master: That will apply to all. Wherever the existence of any witness is disclosed, that the other side gives notice that they may want to examine him, you will see that he is here so that no delay will take place.

The Witness: Could I have notice of that a little before hand, as I am compelled to use Mr. Pettijohn, who did some of this work, in Chicago; and Mr. Parsons will be down in Florida a little while; and may I have some notice to get them back?

The Master: I do not know that they will want to call Mr. Bray, but of course it is conceivable that they may want to examine him. But so far as it is feasible, when they develop the fact that the link in the testimony develops the fact that

they want some witness other than yourself, I would like to have the counsel for Virginia indicate that they would like to have the party in attendance.

Mr. Harrison: We will do that.

Mr. Lilly: Mr. Bray is the only accountant that examined the records in Washington.

The Master: He is right here, and we can have him at any time. But if any of the others are needed we will give you as much notice as possible. I would expect counsel for Virginia to give at least twenty-four or forty-eight hours' notice.

Mr. Harrison: We will do that.

Mr. Holt: I suppose that Mr. Bray is the only man who would be involved in the examination of any records at a distance. The others would be right here in this town.

The Witness: I want to be sure that you would not consider that I was derelict in my duty, because I have to use my men in other quarters in order to carry on my work.

The Master: Of course you will have to be given proper notice, so that you will have your men here when they are needed. All I am interested in is that we shall have them here when they are needed; I do not want to stop this hearing on account of the absence of one or two witnesses who, with proper and seasonable notice, might have been in attendance.

Q. Now, I would like for you to tell me, please, so that I may get it there in this connection, the value as shown by you of this Orange & Alexandria Railroad Company stock owned by the State in June, 1863, where you show a book value, I think you call it, of $134.25. What does that amount to, that is to say, the total value of the State's holdings at that period, June, 1863?

A. $1,140,566.62.

Q. That is an increase in value over January, 1861, of how much?

A. $207,999.82.

Q. Did you examine to ascertain what the market quotations of that Orange & Alexandria stock were in the City of Richmond, either in January, 1861, or June, 1863?

A. No, sir, I did not.

Q. And you have no information on that subject, have you?

A. No, sir.

Mr. Holt: If you will permit me, Mr. Harrison, I will state that we have another accountant who has probably made those examinations.

Q. Now, in the matter of the Richmond & Danville Railroad Company, what do you find as a total par value of the stock for the year 1856?

A. $1,975,040.

Q. Is that amount correct?

A. Yes, sir.

By The Master :

Q. What sheet are you referring to?

A. Exhibit No. 3, Asset No. 2.

Q. Page what?

A. Page 13 of the printed book.

Mr. Holt: That is an exhibit for the year 1861 and has been printed.

Mr. Anderson: That is Exhibit No. 3, page 13, volume 1 of this record.

The Master: I have that all right. I was tracing up on the blue prints for 1863.

The Witness: Page 19, your Honor, of the present record.

By Mr. Harrison:

Q. On what do you rely for that statement?

A. On Document No. 17.

Q. What page?

A. 622-23.

Q. I observe that on that page the amount of the stock is stated to be, the total subscription is stated to be $2,000,000, and unpaid $24,980, leaving $1,975.020, as the amount instead of $1,975,040, as you have it.

A. That may be, but my record on that happens to read unpaid, $24,960. It may have been an error in checking it off which would make an error of $20, in outstanding stock.

The Master: Do you concede it to have been such an error?

The Witness: No, sir, not without examination of the document.

The Master: Take the document right there. Let us clean that right up when we are on it. We might just as well settle these matters as we go along. Look at it and see just exactly what you concede is right. It is a simple matter to be sure but we may as well clean it up.

The Witness: It will be $1,975.020.

The Master: Instead of $1,975.040.

The Witness: Yes, sir.

Mr. Holt: That was the point of my inquiry this morning, your Honor. The understanding was, as I understand it at least, that in the checking between Mr. Potter and Mr. Holt, that whenever Mr. Potter discovered anything of that kind it would be arranged between them, and not come in here and inflict it upon us here. Mr. Potter appears here with his checks for the first time it seems. We supposed it was mutual.

The Master: I cannot control that very well.

Mr. Holt: I know you cannot, but I am simply calling attention to it. We have done our best to obey your request.

Mr. Harrison: And as far as we are concerned we can say the same thing, we have done our best to obey your request.

Mr. Holt: My point is, if Mr. Potter discovered a mistake of $20 in checking up with Mr. Hillman, he did not call Mr. Hillman's attention to it, but comes in here to correct it with a long rigamarole of evidence.

Q. In the case of Orange & Alexandria you use in some instances the amount subscribed and in other instances the amount paid in as a basis for what you call your book value. Which method did you apply in regard to the Richmond & Danville?

A. In 1856 I applied the amount paid in.

Q. And in 1860?

A. The amount paid in.

Q. You show, do you not, the book value of this Danville stock in 1860 to be $137.37?

A. Yes, sir.

Q. Is that intended to represent the book value as of January 1, 1861?

A. No, sir, on September 30, 1860, the nearest date we have.

Q. Then it is the only book value which you have introduced with reference to 1861, is it not?

A. Yes, sir.

Q. And it is used for that purpose to represent its value as of that date?

A. Yes, sir.

Q. Now, how did you arrive at that, by the same method that you arrived at the book value of the Orange & Alexandria Railroad?

A. Yes, sir, adding the profits each year above operating expenses, taxes, interest and dividends to the last trial balance profit which could be determined.

The Master: You mean trial balance surplus?

The Witness: Surplus, yes, sir, which could be determined.

Q. Have you any knowledge of the Richmond & Danville stock, its value, whether book or otherwise, except what you have derived from the volume called Document No. 17, which we have been using here?

A. No, sir.

Q. And your figures are based upon what you found in that document?

A. Yes, sir.

Q. You took the profits, the alleged profits, the alleged profits as shown in that volume as a basis for determining book value, did you not?

A. Yes, sir, I took the profits as shown in that volume as the basis.

Q. I notice on your exhibit you took $79,247.90 as a dividend paid in 1860.

A. Yes, sir.

Q. Was it paid?

A. Yes, sir.

Q. Where did you find that?

A. From Document No. 17, dividend 4 per cent.

Q. Will you refer me to the page in that report wherein it states that that dividend was paid?

A. I cannot do so without reference to the report.

Q. I hand you the report.

A. I fail to find it there.

The Master: If you cannot find it right away, why, come in in the morning and show where it is. We do not want to stop to have him look these books over. I will give you all the opportunity to test his recollection, but we cannot wait ten or fifteen minutes.

Mr. Lilly: I would like to suggest, your Honor, without any intended criticism of the gentlemen on the other side, that these schedules were furnished two weeks ago, and we have helped their accountant to check up these matters, and if there was a mistake in the dividend, if it was improperly there, it seems to me in fairness to us it ought to have been pointed out before now, and not wait to come in here now at this time and delay the record. Of course if they want to pursue that, all right, but I think it would have been better to have acted differently.

Mr. Harrison: Mr. Pollard informs me that he pointed this out to Mr. Hillman's assistant in his absence.

The Witness: I can settle the matter right now and state where it was derived from.

The Master: If it is necessary, I am going to give either side the full opportunity, but if it is necessary to make an examination during a hearing they can make it during the intermission and come in and state it later. Now you say you are ready on that point?

The Witness : Yes, sir. Journal D. folio 5, Board of Public Works, State of Virginia, shows December 15, 1859, Richmond & Danville Railroad dividend of four per cent., due December 1, 1859. Finding that this was paid upon the stock belonging to the State, we have deducted from our profits four per cent. on the entire capitalization of the Richmond & Danville Road for the year September 30, 1860, in order to be on the safe side, finding that a dividend had been paid to the State we have assumed that it had been paid to all stockholders, and have deducted it.

By The Master :

Q. That is, in order to reach your result as to profits on which you predicate your book value, is that what you mean?

A. Yes, sir.

The Master: My only suggestion is this when we reach something which requires time in investigation, the witness will simply have to state that he cannot on the spot answer that question but will answer it later. I cannot stop here for ten or fifteen minutes to have a search made. This is not a criticism upon Mr. Hillman, of course, because it is an absolute impossibility for a man to keep all these things at the ends of his fingers, to answer right off the bat. My idea is that when you come to something that you cannot answer right off you will simply have to say that you will do it later. Is that all right, Mr. Harrison?

Mr. Harrison: Yes, sir.

By Mr. Harrison:

Q. Do I understand you now, in your explanation, to assume that the same dividend was paid in 1860 that was paid in 1859?

A. No, sir.

Q. Well, your answer seemed to relate to the year 1859, while my question related to the year 1860.

A. The date which I mentioned, December 1, 1859, is included in the fiscal year which we have under discussion which ends September 30, 1860.

Q. Is there any evidence to show that this dividend was paid?

A. Yes, sir, I have just quoted it.

Q. What do you say?

A. I have just quoted it, Journal B, page 5, Department of Public Works—

Q. Do not repeat those things any more, they are just really unnecessarily consuming time. If that is what you really rely upon I will ask you to bring it in at your convenience.

The Master: Bring it in in the morning. We won't spend any more time on that. The understanding is that Mr. Hillman is to produce in the morning the original entry that you are now testifying about, that is if the book is here where you can reach it. I suppose it is here, is it not?

Mr. Harrison: Yes, sir.

The Master: In the morning bring it in, the first thing, the original entry, so that we can check it.

Q. Did you find, in this document, upon which you rely for the statements which you have prepared and introduced here, any evidence of any allowance for depreciation in the case of the Richmond & Danville Railroad Company?

A. No, sir.

Q. Or in the case of the Orange & Alexandria?

A. I found no specific instance of an allowance for depreciation.

By The Master:

Q. Do you find anything on the books tending to show whether or not renewals were charged into operating expenses or charged to construction costs or was your examination negative in that respect?

A. Entirely negative, your Honor, simply taking the operating expenses which they had expressed upon the record. I made no examination further.

Mr. Harrison: We have here the documents from which these exhibits were prepared and we want to submit them to your Honor so that you can see for yourself just what they show.

The Master: That would come along when you are putting in your case in chief, or, so far as I am concerned it is perfectly agreeable to me to have everything of that sort come along in the order of cross-examination.

Mr. Holt: In so far as it is evidence in chief, I would rather they would carry the books than we would have to bring them out.

Mr. Harrison: The books have already been referred to by the defendant and its case founded upon them, and our

friends said in the beginning that they would produce them if they were desired. Now, I do not see why they want to repudiate the books.

The Master: I do not understand that they do.

Mr. Holt: The only point is this, your Honor and Mr. Harrison, that in so far as it is legitimate for cross-examination it is perhaps up to us to bring them in if you request them, but in so far as it may constitute an examination in chief we do not feel called upon to bring them, that is, if you are going to introduce such books. We thought, coming back to what I said before, that these two accountants had been directed by the Master to compare notes and if either found a mistake in the other's calculations or reference, to call the other's attention to it and only present to the court an admittedly correct statement. If they would get together on that it would save a great deal of time. That was your suggestion in the first place.

The Master: Or if there was a disagreement as to an item, to call my attention to the item.

Mr. Holt: Yes, bring it to you.

The Master: That was in a general way the understanding. Of course they can develop their case on cross-examination in their own way, even under that arrangement; but before we conclude tonight I was going to see how far we could tie up some of these schedules on that basis, before we adjourn. Of course the object of that suggestion and that arrangement was not to embarrass either side to the controversy, but it was to facilitate results.

Mr. Harrison: I am passing for the time being the inquiry that I was upon just now about the payment of that dividend until the book can be brought in upon which reliance is placed. I do not mean for it to be sent for now unless it is convenient. If you can get it, then all right.

The Witness: It is in the building and we can lay hands on it in one moment.

Mr. Harrison: I am going to wait for that.

The Master: I am not going to wait for those things, I do not mean a minute or two minutes, but I am not going to

have long delays waiting for details of that sort, because I won't have the hearing prolonged that way.

Q. What do you show the book value as described in the Richmond & Danville stock in June, 1863?

A. $162.27.

Q. That then is an increase over 1861 of $24.90 a share, is it not?

The Master: $21.99 is the way I have it. Page 12, Brother Harrison, that I have shows, 1861, book value, $141.28, and 1863, $162.27.

Mr. Harrison: $137.37 is shown.

The Witness: Your Honor, he is referring to the value that we used in January 1, 1861, which was of September 30, 1860. Your Honor is looking at September 30, 1861.

The Master: Oh, I see, yes.

A. Yes, sir, $24.90 increase per share.

Q. What do you show the total value of the State's holdings of the Richmond & Danville to be on January 1, 1861, at $137.37 a share?

A. $1,632,777.76 as shown by page 13 of the Defendant's Exhibits in this case.

Q. And the total value of the State's holdings, June 20, 1863, to be how much?

A. $1,928,738.79 as shown on Defendant's Exhibit No. 2, 1863, page 7.

Q. Being an increase over 1861 of how much?

A. $295,961.03.

Q. And that amount you carried in as representing whatever value the document shows that you relied upon in your summary of West Virginia's claims for 1863, did you not?

A. Yes, sir.

The Master: Now, I notice the witness has produced this entry, and I suggest that you put it right in now so as to have it as near as possible at the place you inquire about. Have you submitted it to the inspection of Mr. Harrison?

Mr. Harrison: Yes, it has been submitted to us.

The Witness: Shall I read the entry, your Honor?

The Master: Yes, read it into the record.

The Witness: (Reading.) John S. Calvert, Treasurer of the Commonwealth, to sundries, dr. Amongst these sundries are, under date of December 16, 1859, Richmond & Danville Railroad Company dividend of four per cent., as of December, 1859, $17,543.94; and on December 21st, the same in part, ditto, ditto, $10,000, showing that it was made in two payments.

Q. What is the total of the two entries you have given?

A. $27,543.94.

Q. My question related to the deduction of the dividend of $79,247.90 for the year 1860. As I understand it you have referred to entries where two items appear aggregating some $27,000, being a four per cent. dividend paid in 1859, paid in December, 1859. I do not see the connection between the two.

A. If the State received a dividend of four per cent. upon stock, and the books of the State of Virginia show the receipt of four per cent. during the fiscal year in question, of four per cent. upon its stock, it is but reasonable to presume that the road paid to all of its stockholders four per cent. on its stock and therefore the amount has been calculated at four per cent. on the total outstanding stock and deducted from the net earnings.

By The Master:

Q. That calculation results in this $79,000 that you speak of, is that what you mean?

A. I mean that the total—

Q. Mr. Harrison's inquiry is as to a specific sum that seems to have been paid in dividends. What he wants to know is how you got at that, and if I understand it right you ascertained that result by finding that there was upon these books as a matter of original entry a dividend of four per cent. made on the stock of the State of Virginia. You assumed that the same dividend was made on the whole capital stock, and you computed the dividend on the whole capital stock at the rate of four per cent, which produced this result of $79,000?

A. Yes, sir.

Q. Is that what you mean?

A. Yes, sir.

The Master: That is the situation, is it?

Mr. Harrison: Yes.

By Mr. Harrison:

Q. Then you did not find any entry showing the payment of $79,000 for the year 1859 or the year 1860 either?

A. No, sir.

Q. Now, it seems that this payment we are talking about relates to the year 1859, that you are talking about, so far as the receipts you have produced, in the dates, the year 1859. The dividend about which I am inquiring, as shown by your exhibit, is for the year 1860. Your exhibit shows that in 1859 a four per cent. dividend of $79,239.90 was paid. Your exhibit also shows that in 1860 a dividend of $79,247.90 was paid. Now what I have asked you for was to show the evidence of the payment of the dividend of 1860 and not the dividend of 1859.

The Master : That is, what do you find on the books that justifies you in stating upon your exhibit that there was a four per cent. dividend in 1860, is that not it, Mr. Harrison?

Mr. Harrison : Yes, sir, that it was paid, that there was any payment of that dividend as this purports to read.

The Witness: The journal entry which I have just quoted distinctly states that the dividend was due December 1, 1859, which date is included in the fiscal year which we have under discussion, which reaches from September 30, 1859, to September 30, 1860, and therefore that four per cent. must have been paid during the year which we have under discussion, and therefore was deducted from the total receipts of this year.

By The Master:

Q. Well, you do not find any specific entry of any $79,000 having been paid in dividends by anybody or to anybody, is not that true?

A. That is true.

Q. The dividend is the result of a computation?

A. Yes, sir.

Mr. Holt: As I understand it, if your Honor will permit me, it is this—

Mr. Harrison: Judge, I would much rather the witness would testify.

Mr. Holt: I am not going to testify.

Mr. Harrison: I would like to continue my examination.

Mr. Holt: I was undertaking to make a statement before you continued.

The Master: I understand strictly speaking that is the rule.

By Mr. Harrison:

Q. Did you examine the president's report for that year, September 30, 1859 and 1860, of the Richmond & Danville Railroad Company, in document No. 17, page 421?

A. Yes, sir, the particulars I did.

Q. He quotes in his report as follows, "Both the financial condition of the country and of the company in the opinion of the board make it unwise to declare a dividend at this time, but they trust at no distant date to declare semi-annual dividends of two per cent."

The Master: What is the date of the report?

Mr. Harrison: Ending September 30, 1859 and 1860, that is the way it is headed. I take it for granted it is for that year. It says for the year 1859 and the year 1860. The report itself is not dated, except with that caption, but it starts with that year.

The Master: The necessary inference is that it relates to the year after 1860.

Q. Is not that inconsistent with your statement, your assumption that a dividend was paid in 1860?

A. Not in the slightest.

Q. It it not?

A. No, sir.

Q. What is your authority now for saying that a dividend was paid in 1860 of $79,247?

A. An entry on the books of the State of Virginia where, on December 16th, and December 21, 1859, both dates being within the current fiscal year which we are examining, that they received a four per cent. dividend upon the stock which

they owned in the Richmond, and Danville Railroad Company, and further the assumption is that the State did not receive any dividends on its stock unless the dividend was declared upon the stock generally, and therefore that four per cent. was declared during this fiscal year upon the entire capital stock of the company.

Q. Well, now, will you be good enough to give me your authority for saying that a dividend was paid in 1859, also, of $79,239.90?

Mr. Lilly: Is not that just what you have asked, Mr. Harrison?

Mr. Harrison: I was asking about 1860.

The Master: There are two years on the exhibit, one for 1859 and one for 1860. And Mr. Harrison wants to find out what he predicates his 1859 statement on. Am I right about that?

Mr. Harrison: Yes, sir.

The Witness: Your Honor, may I look at document 17 again, of 1859?

The Master: Yes, certainly, but if it is going to take much time we will not wait. If you can find it in just a few minutes all right, but we cannot have any more ten minutes' wait.

Q. Where does it show it?

A. It shows the declaration of the 1859 dividend.

Q. Does that show payment?

A. No, sir.

Q. And how is it declared, how is the declaration shown? Are you relying upon what the president said in his report for your statement?

A. Yes, sir, I thought that was sufficient: I did not look further through the report to see if it is on the cash.

The Master: Suppose you suspend further answer to that question and between now and to-morrow morning you examine such original data as is open to you and then tell us whether there is anything in addition to that report of the president upon which you rely as the basis of that statement. That will take care of that. You need not stop to look that over any more now. Come in in the morning with it.

Q. You evidently have not examined this question before yourself, but are depending on the examination made by others, is that true?

A. No, sir.

Q. Have you examined before to see whether these dividends were paid?

The Witness: Page 456, Document No. 17, 1859, Board of Public Works report, State of Virginia, states—I am quoting now—"And the generally prosperous condition of its affairs in the opinion of the Board justifies the declaring of a dividend of four per cent. upon the capital stock of the company. This dividend in the aggregate amounts to nearly $80,000."

The Master: What is the date of it?

The Witness: From the president's report. The report is not dated. It was subscribed and sworn to by the treasurer and superintendent on the 29th day of November, 1859, as shown on page 458.

Q. Does that show payment?

A. I say that the report was subscribed and sworn to on that date.

Q. I ask you now if you have shown two payments of $79,239.90 and $79,247.90 respectively for the years 1859 and 1860.

A. Yes, sir, I think so.

Q. You think so?

A. Yes, sir.

Q. And it is shown by what you have read from this document just now, does that show payment of the 1859 dividend?

A. Yes, sir.

Q. Your first reference was to the document book.

A. Yes, sir.

Q. You were corrected and reminded if there was any record at all it was in another book, were you not?

A. No, sir. I went to that other book of my own volition. I will state that I had used every source that I could to determine any charges against the income of these roads, and when I found a reference to the charge—to the income of the road I have deducted it from that income so as to be sure that I was deducting every item that could possibly be legally or properly

deducted from it, and that is the reason why the four per cent. was taken in 1859 from the declaration of the president that it had been declared and that the four per cent. was taken in 1860 from the records of the State of Virginia showing that they had received a dividend December 31, 1859, which fell in the 1860 fiscal year.

Q. According to that then it would be a payment of a dividend nine months before it was due, would it not?

A. No, sir, not at all.

Mr. Holt: Your Honor will perceive right there that even if that other dividend had not been declared and paid it makes it all the worse for us, because he has actually deducted two dividends when he should have only deducted one.

Mr. Harrison: I was not addressing my inquiry on that subject with reference to the effect it would have on the State of Virginia or West Virginia, but to show the accuracy of this account.

Mr. Holt: That may be true, but wherever we err, if err we do, it is on the safe side in ascertaining book value, that is my point.

The Master: I understand its effect.

Mr. Holt: Of course you are not interested in Virginia any more than you are in West Virginia, I know that of course.

Mr. Harrison: I am actuated by avaricious motives altogether.

Q. You have no information in respect to the value of this stock at either date, January, 1861, or June, 1863, except what you obtained in this document No. 17? You may have answered that, I may have perhaps asked you that question, but I have forgotten it and I want to be sure that I have got it in.

A. Yes, sir; I have been able in this case to construct an incomplete trial balance of the Richmond & Danville Road on September 30, 1860, which I consider rather as indicative than actual.

Q. What did you construct it from?

A. From Document No. 17.

Q. Did you examine to see if you could ascertain what the

market value of any of these stocks was in January or June, 1861, or 1863?

A. No, sir, I did not.

Mr. Holt: Do you mean by that market quotations?

Mr. Harrison: Yes, sir, I mean market quotations.

The Witness: Your Honor, I am now prepared to answer the question concerning dividends of four per cent. on the Richmond & Danville stock in 1859 and 1860. The answer is that this dividend was declared in 1859 payable in the fiscal year ending September 30, 1860, and that therefore there was but one dividend in the fiscal years 1859 and 1860, and that in order to be on the safe side in determining these earnings I have, as I said before, deducted it from both years so as not to over state it.

Mr. Lilly: That would increase the surplus $79,000, wouldn't it?

The Witness: It would, yes, sir.

The Master: If it was not deducted.

Mr. Lilly: But he deducted it for two years and he said it was only declared for one year.

The Master: If he had not deducted it it would have increased the surplus, but he has deducted it, so that diminished the surplus.

Mr. Lilly: What I mean to say is this, that having deducted it, that would entitle us to increase the surplus $79,000 or increase the book value of that road.

The Master: It would if you corrected it upon the assumption that there was only one dividend to be deducted.

By The Master:

Q. Do I understand that you deducted two dividends from one year's value?

A. No, sir, one for the year 1859 and one for 1860.

Q. They did not declare them for both years. If the 1859 dividend had not been declared I suppose there would have been that much more in profit and loss account.

A. I find that the dividend which the president spoke of as being declared in 1859 was declared payable in 1860. Finding

the declaration in 1859 I deducted it from my 1859 net earnings. Finding the payment on the books of the State as December 1, 1859, included in the next year, in order to be on the safe side I also deducted from that year so as not to over state my surplus.

By Mr. Harrison:

Q. In reference to the Richmond & Petersburg Railroad Company, will you please state what you ascertained to be the book value of the State's holding of that stock on January 1, 1861—I mean the book value of that stock on January 1, 1861?

A. $121.86.

Q. $121.86 a share?

A. Yes, sir.

Q The total amount of the State's holdings in that company were what of stock, at that time?

A. $385,600.

Q. That is the par value?

A. The par value.

The Witness: Your Honor, this is shown on page 13 of the current record in the exhibits.

Q. You ascertained the book value of that stock in the same manner that you did the previous railroad stocks that we have been inquiring about?

A. Yes, sir.

Q. And relying upon the same book, Document 17 of the Board of Public Works?

A. Yes, sir.

Q. You have no knowledge of the value of that stock other than you derived from that book?

A. No, sir, I have not.

Q. And your book value there was based upon the profits as shown in the source of information on which you relied?

A. Yes, sir, the profits added to the profit and loss account on the last trial balance.

Q. Now what did you show to be the book value of the Richmond & Petersburg stock in June, 1863?

A. $141.24, as shown on Defendant's Exhibit No. 3, 1863 page No. 15.

Q. That is an increase of $19.39 a share, is it not, over 1861?

The Master: I have it here page No. 7. That contains the recapitulation. It is the same thing, I suppose.

Mr. Hogg: Page 15 is the one that he is looking at.

The Master: Well, that is identical with the other page.

The Witness: It is the sub-exhibit, your Honor.

Q. (Question repeated.)

A. $19.38 over September 30, 1860.

Q. Well that makes a total increase then in June, 1863, over January 1, 1861, in the State's holdings of this stock, how much?

A. $74,729.28.

Q. Did you rely upon Document No. 17 for your statement of the value of this stock in June, 1863, as you did in January, 1861?

A. Yes, sir, it is the same report, but I see it is noted as document 15 in that year, on file in Washington, D. C., Congressional Library.

Q. And your testimony is based exclusively on whatever information you derived from that book?

A. Yes, sir.

Q. And you have carried those items respectively in your summaries for 1861 and 1863 as constituting a claim on the part of West Virginia, have you not?

A. Yes, sir.

Q. I presume in this case, as in others, you found no evidence of any allowances being made for depreciation?

A. I found none; I looked for none.

Mr. Harrison: We can suspend here.

The Master: Perhaps on account of the suggestions that have been made I had better make this inquiry, whether or not Mr. Potter has had the opportunity to check up these '63 schedules with the accountants on the other side and if so whether they have been checked up.

Mr. Potter: The calculations are being checked now. Most of them are finished.

The Master: Will there be any objection—of course I do not want to make any suggestion that will embarrass either side, but after Mr. Potter completes his checking up will there be any objection to his notifying the other side as to what items he disagrees with them on, so that we may confine any controversy there may be to those items?

Mr. Harrison: I do not suppose there would be any objection to that. Mr. Potter can explain.

Mr. Potter: I would like to make a little explanation. The gentlemen on the other side seem to feel that I have not acted in good faith in this matter. I have. I have been in constant touch with Mr. Leeds, in Mr. Hillman's absence. Mr. Leeds made the same explanation that Mr. Hillman has since made, and I knew of it on the 24th of August, and I so noted it in my record. And it was not changed in the final schedule, so I had no choice in bringing these matters before the attorneys. It is not up to me to say what will be presented here or discussed. That is the item of $79,000 of dividends.

The Master: In the other item of $20.—

Mr. Potter: I cannot say that I remember that particular item, but there are a great many items that we have gotten together and agreed on.

The Master: The understanding is that you will pursue your investigations and checking, and as to the items that you are not able to agree on, why those can be reported to me and I will pass on them. Otherwise, everything is all cleaned up. If I understand it correctly, Mr. Harrison, no question is raised as to the accuracy of the schedules and the supporting schedules submitted by Mr. Hillman with reference to items 1, 2 and 3, which have been examined about this afternoon and found on page No. 7; that is, the Orange & Alexandria Railroad Company, the Richmond & Danville Railroad Company and the Richmond & Petersburg Railroad Company. That is, it is conceded that the items are accurately expressed and that the computations are accurately made as to those three items

in the schedules and the supporting schedules. Am I right about that?

Mr. Harrison: I understand from Mr. Potter that the figures and the calculations as far as he has checked them, are correct. We have no idea of making any question about them, because if we found any error in the calculations, why, we would have it made right. But on those lines that your Honor suggested, so as to limit any controversy as to whether the calculations are right, why I have no question on earth that we will be able to agree on that.

The Master: That cleans up those three items. As to the other items, if disagreements are developed, the accountants will do the best they can to get together on them, and if they do not get together on them I will pass on them. With that suggestion we will adjourn until to-morrow morning at 10 o'clock.

Adjourned to September 5, 1914, at 10 A. M.

BEFORE THE MASTER.

Richmond, Va., September 5th, 1914.

Present, the same counsel who appeared on yesterday.

The Master: You had completed, as I understand it, Mr. Harrison, items 1, 2 and 3 of page 7. Are you ready to proceed?

Mr. Harrison: Yes, sir.

Continuation of the cross-examination of

CONWAY W. HILLMAN.

By Mr. Harrison:

Q. Mr. Hillman, please state what amount of stock you show on your exhibit, Defendant's Exhibit No. 3, page 13, was owned by the State of Virginia on the 1st day of January, 1861, in the Virginia Central Railroad.

A. $1,927,382.57, in a side note in brackets after the amount $1,891,670.68. I notice that in the print that $1,927,382.57 is out of line. I had not noticed it before.

The Master: The type is distributed on that. Of course that is no particular harm, but at the same time you can see how that would immediately give rise to confusion.

Q. What do you show the book value of that stock to be on the 1st of January, 1861?

A. $131.16 per share of $100.

Q. What sum did you charge to Virginia at $131.16 per share, as shown by your exhibit?

A. $2,481,115.26.

Q. What sum did you multiply by 1.3116 to reach that result?

A. $1,891,670.68.

Q. What significance then have the figures in brackets to which you have referred, of $1,927,382.57?

A. To identify the amount of stock owned by the State of Virginia in the Virginia Central, so as to connect it with the amount upon which I had calculated its value on the book value basis.

Q. But those figures do not enter into your calculation, do they?

The Master: I do not quite understand that question. What Mr. Harrison wants to know is what the significance of $1,927,382.57 is, and I think you would make that plainer if you would state in the first place just exactly what that is and what you got it from, and then make your distinction if you have any distinction. I do not understand your answer.

The Witness: Folio 185 of Ledger B, Internal Improvement Fund, shows that on January 1, 1861, the cost value of the Virginia Central Stock held by the State of Virginia was $1,927,382.57.

Mr. Harrison: Let him answer my last question in that connection.

The Witness: And the amount put in brackets upon page 13 of the exhibits in this case is to identify the amount of this stock so that it can readily be traced upon the books of Virginia as well as upon the statement which shows the final settlement of this stock. In short, it is for identification purposes only that it is entered here.

By Mr. Harrison:

Q. (Question repeated).

A. No, sir, they do not.

Q. The figures $1,891,670.68 which are extended under your column of values at 131.16 represents what?

A. The amount of the subscription of the State.

Q. As of what date?

A. As of September 30th, 1860.

Q. To the capital stock of this road?

A. To the capital stock of the Virginia Central.

Q. And the figures that are enclosed in brackets which do not enter into your calculation, namely, $1,927,382.57, represent for identification what?

A. The amount of the subscription or paid subscription to the

Virginia Central stock by the State of Virginia on January 1, 1861, three months later.

Q. Why did you not extend those figures at the price per share?

A. For the reason that the price per share had to be determined of the date of September 30th, 1860, and therefore, having determined the book value of that date, we applied it to the subscription of that date, as further subscriptions to the stock would upset the book value by having a larger divisor into the surplus.

By the Master:

Q. Do I understand that on September 30th, 1860, the State of Virginia had subscribed and paid for stock to the amount of $1,891,670.68, and that on January 1, 1861, it had subscribed and paid for stock to the amount of $1,927,382.57, is that the fact?

A. Yes, sir.

Q. How does it happen, I suppose these shares are $100 par value, are they not? I don't quite understand how you get the odd figures in subscribing and paying for stock, particularly if it is subscribed and paid for at par; for instance, you get $70.68 in one aggregate and $82.57 in another aggregate, and neither one of those can represent a share of stock. What I would like to know is if there is any explanation on the books how that irregular number appears there, if it is predicated upon a definite number of shares and the payment thereof.

A. Yes, sir, there is an explanation, and it is this, that the subscriptions to the stock were taken in in installments, and, as the public, the general public, would subscribe and pay an installment the State would then pay a proportional amount to public subscriptions on its account.

Q. Now do you mean that that was true even where it resulted in the fractional part of a share?

A. Yes, sir.

The Master: That is all right then, I understand it. If that is the explanation that makes it clear.

By Mr. Harrison:

Q. Do you mean by the explanation that you have given that you had no means of ascertaining the book value of this stock on January 1st, 1861, and that for that reason you took the book

value of September 30th, 1860, and based your calculation on the amount subscribed, as of that date, September 30th, 1860?

A. Yes, sir.

By the Master:

Q. Then this item is not exactly in harmony with your heading on the schedule. Your schedule says par at the opening of business on January 1st, 1861, and it now develops that this was September 30th, 1860. Am I right about that?

A. Yes, sir, you are.

By Mr. Harrison:

Q. Did you not find the total value of the Richmond & Danville stock by multiplying the stock paid in under January 1st, 1861, by the book value which you ascertained as of September 30th, 1860?

A. Yes, sir.

Q. Then you apply a different method in relation to the Richmond & Danville from that that you now apply in the matter of the Virginia Central, do you not?

A. No, sir, for the subscription to the Richmond & Danville Railroad stock was the same on both dates, September 30th, 1860, and January 1st, 1861.

Q. Now did you arrive at the book value of the Virginia Central road by the same method that you arrived at the book value of the stock held by the State in the other roads that you have testified about?

A. Yes, sir.

Q. And did you rely upon the same source of information?

A. Yes, sir.

Q. Namely, the book referred to as Document No. 17?

A. Yes, sir.

Q. Which book contains the annual reports of the officers of the road, does it not?

A. Yes, sir.

Q. You ascertained the value then on the basis of income and expenses as shown by those reports, did you not?

A. Income and expenses after September 30th, 1856, yes, sir.

Q. No allowance was made by those reports for depreciation, was there?

A. That I am totally unable to answer, whether there was or was not.

By the Master:

Q. Well you can state whether or not the reports so far as you saw them showed any allowance for depreciation, I suppose?

A. Yes, sir.

Q. What is the fact in that regard?

A. As far as the reports go there was no entry on them under the heading of depreciation.

Q. That is consistent with your statement the other day that so far as you were able to ascertain from either reports or books that there had never been anything charged off to depreciation so far as you knew?

A. That is correct.

Q. So far as the reports go they show no direct charge to depreciation?

Mr. Lilly: As I understood, he did not know but what it was included in some of these items.

The Master: All he could say was that so far as his examination went, both as to the reports and the account, nothing appeared in there that showed that no charge had been made, or as far as he was concerned had not been made.

Q. The books and the records were entirely negative on that proposition, is not that right?

A. Yes, sir.

Q. And that I take it applies to all of these railroad accounts?

A. Yes, sir.

Mr. Holt: I have understood the statement of the witness heretofore to have been, which is the same thing, that there was no specific charge on that subject in any of these railroad accounts.

The Master: I understand. In other words if that was the issue they do not contain any evidence of it one way or the other, simply leave us to speculation.

Mr. Holt: That is it exactly.

The Master: That is the way I understand it.

Mr. Holt: So do I.

By Mr. Harrison:

Q. Your testimony in relation to this stock value is based

wholly upon the annual reports as found in this document No. 17, is it not?

A. Yes, sir.

Q. Do you intend the value to which you have testified, based on the reports of these officers as of January 1st, 1861, to be taken as your opinion as to their value?

A. No, sir, I do not. I have made the statement in the record quite frequently that I am determining as far as possible the book values of these stocks as of the date of January 1, 1861, or the nearest date to that which was available; further than that I have not testified.

Q. Now, referring to Defendant's Exhibit No. 3, Asset No. 4, page 25 of the printed record, you show that this stock held by the State in the Virginia Central Railway was disposed of on various dates for a sum total of $241,858.50, which appears from that exhibit to have been paid in 1888 and 1890. Was that the total amount received by the State for that stock at those dates?

A. Yes, sir.

Q. On your exhibit I see you have taken 95 & 7-10ths per cent. of that total amount received by the State. What is the significance of that?

A. As shown by this page 25 which we are examining, there were invested after January 1, 1861, five items in the stock of this road bringing the total up to $2,013,987.52, and $1,927,382.57 is 95 &7-10ths per cent. of this. I have therefore perecnted according to the amount of the investment on January 1, 1861, the total amount received for all of the stock purchased both before and after 1861.

Q. What use is made of that per cent. as shown on your exhibit?

A. It is applied to the total receipts for the stock of $241,858.50 and equals $231,458.58.

Q. Is that the amount then properly chargeable against Virginia, is that what you intended it for?

A. Yes, sir, if this is considered the basis upon which a charge should be made to Virginia.

By the Master:

Q. You mean January 1, 1861, is considered the basis, is that what you mean by that?

A. No, sir; I mean that if the total receipts for the stock, that is the total amount realized on the stock eventually, is considered the basis of the charge, that $231,458.58 is the amount which should be considered in determining West Virginia's claim as of the date of January 1, 1861.

Q. That is, if Virginia is to be charged on the basis of what she actually received, rather than on the basis of value on a certain date, why this should be the basis of the charge?

A. Yes.

Q. It is simply a calculation made to meet that contingency?

A. Yes, sir.

By Mr. Harrison:

Q. Now, turn to your 1863 schedules of the Virginia Central Railroad.

The Master: What sheet page is that?

Mr. Harrison: Page No. 7 of the blueprints.

Mr. Lilly: The underlying page would be 17.

Q. You take as the par of the stock owned by Virginia on the 20th of June, 1863, $2,013,987.52. That represents the total amount as of that date?

A. Yes, sir.

Q. You have under the heading book value $164.61. Was that intended to represent the book value of that stock, and if so as of what date?

A. That represents the value upon the nearest date, September 30th, 1863.

Q. According to your exhibit this stock had increased in value from January 1st, 1861, to September 30th, 1863, how much per share?

A. $33.45 per share of $100.

Q. And the total amount extended by you as representing the value of this stock, under the column value June 20th, 1863, is how much?

A. $3,315,224.86.

The Master: It occurs to me that I am going to give the printer this instruction; I am going to instruct him to print for me two extra copies of these schedules separately from the record.

Mr. Anderson: We had that done before to the great convenience of everybody.

Mr. Holt: We would like four copies for West Virginia.

The Master: There may be fifty copies made.

Q. Then according to your figures this stock had increased in value from January 1, 1861—I mean the States interest in this stock—to June 20th, 1863, or rather to September 30th, 1863, $834,109.60, had it not?

A. Yes, sir.

Q. Your testimony in relation to the value of this stock as of September 30th, 1863, I understand is based upon the reports of the officers of the road as you have heretofore testified?

A. Yes, sir.

Q. And which are found in the Board of Public Works' records bound volumes numbered 17, etc.?

A. I believe the numbers on those volumes in Washington is 15, not 17, document 15 and not 17, and it is noted on the stub sheets.

Q. Based I intended to say upon the same data.

A. Yes, sir.

Q. Those reports did not undertake to state the value of the stock, but you have used the figures shown there to reach this result, have you not?

A. Yes, sir.

Q. And this is put in by you for what it is worth as showing value without intending to be an expression of your opinion on that subject?

A. I have expressed no opinion on that subject.

Mr. Holt: Mr. Harrison, before you begin another question, it was our object in the examination in chief during the time Mr. Hillman was here to ask him, and we believe we did, whether these exhibits do not in each instance indicate book, document, volume and page of all the sources of his information. It was our purpose to make the exhibit show just what his entire source of information was.

Mr. Hogg: You want to propound that question to him now.

Mr. Holt: We propounded it to him a hundred times.

The Master: I think it will be understood that the question was asked as often as was necessary in order to complete the proof on the part of West Virginia. It is so understood by the Master and by both parties to the controversy.

Mr. Lilly: With that in view, it looks as if the cross-exami-

nation might—just a slight suggestion—be relieved somewhat.

The Master: I cannot instruct the other side how they shall cross-examine.

Mr. Lilly: I appreciate that.

The Master: Although I have made that suggestion two or three times. And of course I cannot be expected at this stage to comment on it. It is quite a familiar right of cross-examination that the fellow on the other side has the right to have the same facts stated under his cross-examination that the other fellow had if he wants it.

Mr. Holt: It may be introductory to something else.

The Master: Mr. Harrison is within his rights.

Mr. Holt: We are not criticizing Mr. Harrison.

Mr. Harrison: I understand.

The Master: There is no serious suggestion to the contrary. What Mr. Lilly meant was that he did not know but what you might make a little more rapid progress by eliminating some part of it, but that was rather an expression of a wish than a criticism.

Mr. Harrison: I do not think that involves over two questions anyhow, and they are very quickly answered.

Q. Now in respect to the stock which you have just been testifying about, Virginia Central, Mr. Hillman, have you made any investigation to ascertain the market quotations of this stock at the period about which you are testifying.

The Master: In connection with any of these roads.

Q. In connection either with this stock, that is to say the Virginia Central, or any of the railway stocks about which you have testified in this case.

A. No, sir, I have made no investigation as to the market value or quotations.

Q. And the data upon which you based your figures to ascertain the book value of the Virginia Central stock were silent, or contained nothing as to whether or not anything had been charged off for depreciation?

A. That is correct.

Q. I call your attention to a heading, disposed of for, on your 1863 exhibit, page No. 7. What are those figures under that heading intended to represent?

A. They are intended to represent the amount finally realized by the State of Virginia for the securities in question.

Q. Opposite the Virginia Central Railway you have $241,858.50, instead of 95.7 per cent. of that sum which you have testified represented the amount for which her holdings were disposed on January 1st, 1861—I should say which was the percentage of the amount with which you said Virginia should be charged. Why did you not insert in lieu of the $241,858.50 the true amount with which you said she should be charged if those figures should be utilized at all?

A. Because between the dates January 1st, 1861, and June 20th, 1863, the investment of Virginia in the stock of the Virginia Central road had increased to $2,013,987.52, or 100 per cent., and therefore when the date of June 20th, 1863, is considered, of course the full amount received, viz., $241,858.50 must be considered.

By the Master:

Q. One principal related to one date and the other principal related to the other date?

A. Yes, sir.

Mr. Harrison: That is what I wanted to get clear on the record.

By Mr. Harrison:

Q. Now take up item No. 5 of Defendant's Exhibit No. 3, page 13, the Blue Ridge Railroad built by the State. What was the total amount expended by the State for that road January 1st, 1861?

A. $1,604,723.23, as shown on page 27 of the printed record.

Q. What value as of January 1st, 1861, do you put upon the total expenditure made by the State in the Blue Ridge road which you have just given?

A. $625,348.08.

Q. How did you arrive at the value of that investment as of that period?

A. It was the sales value as of that period.

Q. When did the State receive the money or bonds, as the case may be?

A. April 1st, 1870.

Q. Was it paid in money or bonds?

A. It was paid in bonds and money.

Q. How much money?

A. $8.96.

Q. It is a small matter, but I believe that eight dollars and something was represented by a check, was it not?

A. Yes, sir.

Q. Which the Speaker's report shows was not collected?

A. I did not follow that.

Q. Didn't you?

A. No, sir.

Q. Do you know how that valuation was arrived at, did your investigation involve an inquiry into that or have you been informed about it?

A. No, sir, I do not know how that value was arrived at.

Q. It is all shown in the original record and embraced in the Master's report, but you did not have your attention called to that.

The Master: Please state the page of the original record.

Mr. Anderson: The acts which show the terms on which this transaction was carried out are found at pages 33 to 49 of the appendix to the original record. They were concurrent acts of the State of Virginia and the State of West Virginia.

Q. On your exhibit, Defendant's Exhibit No. 3, page 27, the reference you give for taking this item of $625,348.03, as the amount received by the State in April, 1870, for expenditure in the Blue Ridge Railroad, you refer to Journal D, Internal Improvement Fund, page 171. Did you not find there full information as to how that value was reached? Did you not see, in other words, a report of the Commissioners of the two States, Virginia and West Virginia, or rather, find there that the value was based on their reports? I just want to know.

A. No, sir, I do not recall that fact; it may have been there.

Q. Refer to your exhibits for the year 1863, page 7, and please state what amount you charge Virginia with under the head of June 20th, 1863, on account of her expenditure in the Blue Ridge Road.

A. $1,674,723.23, or the total amount which they had expended.

Q. Then according to your figures the value of that investment had increased from 1861 from $625,348.08 to $1,674,723.23 by June 20th, 1863, hadn't it?

A. Yes, sir, as the exhibits are made up that is the net result.

Q. How do you explain that?

A. I explain it by the fact that I have two columns on page

No. 7, Defendant's Exhibit 3, 1863; one, value June 20th, 1863, and the other, disposed of for; and that the par value is carried into the column June 20th, 1863, and the value of $625,348.08 was carried into the column, disposed of for; and that on page 13 of the present record I had allowed the value of the expenditure to remain in a column headed par, and had carried into value January 1st, 1861, the disposal price.

Q. My question was this; why did you charge Virginia on June 20th, 1863, with the total cost of construction of the Blue Ridge Road as its value, and yet charge her on January 1st, 1861, with $625,348.08 as the value of that total cost of construction at that time, January 1st, 1861.

The Witness: Now, Mr. Stenographer, will you please read the question prior to that, which I had answered.

(Testimony read by stenographer.)

A. That is an inadvertence upon my part.

By the Master:

Q. What is the inadvertence upon your part?

A. That there was a different charge made, or that it was headed differently.

Q. Well, now, you are getting me confused. Where is it headed differently, that is what I would like to know. Now, is not this all there is about it—let me see if I understand it. I understand that on January 1st, 1861, you have got in a schedule here on page 27 of the printed record an item of $1,604,723.23. That you say represents, according to the books, the cost of construction up to that date; am I right about that?

A. Yes, sir.

Q. Now, then, you have got another schedule for June 20th, 1863, an item of $1,674,723.23. Do I understand that that represents the cost of construction up to June 20th, 1863?

A. Yes, sir.

Q. Well, now, then that shows that there was additional cost of construction from January 1st, 1861, up to June 20th, 1863, does it, of the difference between those two sums, is that right?

A. Yes, sir.

Q. Now, I do not understand that you have done anything,

so far as disposal is concerned, except to stick to the item of $625,348.08; am I right about that?

A. Yes, sir.

Q. Where is the confusion then?

A. The confusion is that in one case, which is on page No. 7, Defendant's Exhibit, No. 3, 1863, under value of June 20th, 1863. I have entered the par value; on page No. 13, under the value of January 1st, 1861, I have entered the disposal value.

Q. Wait a minute and let me get that. Page 13?

A. Page 7 of the 1863 exhibits.

Q. I have that page, and under the head of the disposal value you have $625,348.08?

A. Yes, sir.

Q. Now, give me the other disposal exhibit where you have given a value at any other sum.

A. On page 13 the same disposal value is shown.

Q. Now, page 13 shows what—you say page 13 of the exhibits of 1863?

A. Page 13 of the printed record.

Q. That is another thing. Page 13 of the printed record shows the valuation of par January 1st, 1861, of $1,604,723.23, which is exactly the item we have been talking about; it shows a disposal value of $625,348.08.

Mr. Hogg: That is the sales value.

Q. I suppose that column on page 13 is marked value instead of disposal value, is that the trouble?

A. Yes, sir, it is marked value January 1st, 1861.

Q. I get it now. That is the difficulty. In other words your schedule does not accurately state the exact situation?

A. Yes.

The Maser: In order to have his schedule consistent with what he claims the facts are, instead of having a heading, value January 1st, 1861, on page 13, he ought to have said disposed of for, because every other item there is predicated upon, disposed of for.

Mr. Hogg: That foot note would explain that.

Mr. Holt: I think there is a foot note there that fully explains that, on the exhibit itself.

The Master: I get it now. But I wanted to get at what the confusion was. The examination does not enlighten me any unless I understand it as it goes on. I get the point now. Clearly

enough that item appears, so far as the designation is concerned, independent of the explanation, in an improper column, that is all. That is your point, is it not, Mr. Harrison?

Mr. Harrison: No, sir, it is not a question of improper columns with me. If your Honor would have let me had a minute or two more you would probably have seen the point I was driving at.

The Master: I wanted to see if I was keeping up, that is all. Go ahead and develop your idea.

Mr. Harrison: It was not a question of columns. He started off with an answer concerning some explanation, but he was giving the correct statement of the second line, which was that he had made a mistake.

The Master: Instead of being illuminated, I was getting confused.

Mr. Harrison: In order that your Honor may understand what I was driving at, I am contrasting the values that this witness has placed upon the State's expenditure in the Blue Ridge road as of two dates, January 1, 1861, and June 20th, 1863, and you will find that on his schedule where he gives the value of that expenditure, amounting to more than a million and a half; in January, 1861, he states it at six hundred and twenty-five thousand and some odd dollars.

Mr. Holt: The sale price.

Mr. Harrison: The price for which the investment was sold in 1870.

The Master: I get your point.

Mr. Harrison: Now, when you turn to the 1863 sheet you find that he has charged Virginia with the total expenditures of that road; in other words, more than a million dollars or something along there more in 1863 than she should be charged with in January, 1861, and when he was asked to explain that, he then had started to say that he had made a mistake, and at that point your Honor came in, because you had not gotten hold of the point.

The Master: Page No. 70 is the schedule you refer to where he charged you with $1,674,723?

Mr. Harrison: Yes, sir, that is the 1863 schedule.

The Master: On page No. 7, of the blue print schedules.

Mr. Harrison: Yes, sir.

The Master: I get it. I understand that your contention now

is that he admits that this item of $1,674,723 is an error.

Mr. Harrison: That is what I understood him to say.

The Master: Very well. Start from there on, if that is the understanding.

Mr. Harrison: I really have forgotten where I was.

The Witness: Your Honor, since the counsel has made the statement into the record that I stated it is an error, I wish to make a further statement then. Am I entitled to one?

Mr. Harrison: I stated that I understood that to be your reply.

Mr. Holt: So did I; but let him go on.

The Master: I shall have to allow Mr. Harrison's wishes in that respect. Mr. Harrison is conducting the cross-examination and his idea is that the witness has made a statement as a result of that examination. It is Mr. Harrison's privilege to pursue the examination from that on if he desires to do so, and then after, as he goes along, if the witness has any occasion to make an explanation, very well. Of course, without Mr. Harrison's permission I should hardly want to allow the witness to go on now when the examination has stopped and make an explanatin. Mr. Harrison has a right to pursue his cross-examination, and if the cross-examination does not clear it up in accordance with the views of the other side or in accordance with the views of the witness, as he goes along, the witness can make such explanation as is proper as he goes along.

Mr. Harrison: I am of course not undertaking to object to the witness making any explanation.

The Master: True; if it is agreeable to you he can make any statement, but if you prefer to pursue your cross-examination, you have that right.

Mr. Harrison: I would like very much to get back to base again and see if I can take up the thread.

The Witness: Your Honor, the objection that I made was that Mr. Harrison stated into the record that I had admitted that I made an error. That is a statement that does not appear in the record, and I must insist on correcting it.

The Master: Mr. Hillman, don't discuss this case with Mr. Harrison. You are simply the witness; you are under his cross-examination, and you do not make any statement here except it is in response to some question put by him, unless he is willing that you

should make some statement in the record. There can be no discussion between the witness and counsel. You will have a full opportunity to make all explanation that you think may be necessary or that the attorneys for West Virginia may think will be necessary.

Mr. Holt: I have no doubt that Mr. Harrison's further questions will give him an opportunity to make an explanation. The only trouble with Mr. Hillman was this, he was fearful that the statement made by Mr. Harrison into the record would bind him.

Mr. Lilly: He misquoted him, he thinks.

Mr. Harrison: I did not misquote him. I said what I thought he said, and if I am mistaken about it, his own answer would correct me. I said that I had understood the witness when he started to reply to the second question, that he had stated that that was a mistake or inadvertence. If I am mistaken about that, his answer will correct it.

Mr. Holt: If you are mistaken then I am mistaken. I received the same impression; but your further examination will clear this thing up.

Mr. Hogg: I would like to submit one observation in regard to this argument—

The Master: No, I would suggest this, I do not think I can allow any discussion of this testimony as it is coming in, one way or the other. The situation is this, and I suppose perhaps I myself am responsible for breaking in and adding to the confusion. The difficulty with me was I was perhaps too anxious to get the purport of it before I allowed Mr. Harrison to complete. Mr. Harrison is conducting the cross-examination and so far as he is concerned it is for him to say how he will do it. We have reached a stage now where the witness has answered a certain question. Mr. Harrison has got a right to develop his cross-examination along that line without any suggestion from the other side or without any suggestion from anybody or without any discussion between himself and the witness. The witness is not to argue this case with counsel, and if Mr. Harrison does not wish it, nobody is to comment upon this examination as it goes in by way of explanation or otherwise. A comment might destroy the effect of a cross-examination. You can appreciate how that may be. This whole thing from now on is between Mr. Harrison and Mr. Hillman, and from now on it will be conducted in

this way, Mr. Harrison will ask the questions; Mr. Hillman will answer the questions and stop when he gets through with his answers. He will not try to argue the case or try to make any explanation relative to the answer to a question that he makes. I understand that to be the proper legal rule.

Mr. Hogg: I would like to make this statement. I have not interfered with the examination or the cross-examination. I have kept very quiet. I do not understand this schedule—

The Master: That is not to be discussed now unless Mr. Harrison wishes to go into it.

Mr. Harrison: No, I do not.

Mr. Hogg: I wanted to see whether I understood it.

The Master: That is not to be made the subject of colloquy between counsel unless Mr. Harrison desires it.

Mr. Harrison: I would rather go out in the hall and discuss it with him.

The Master: Here is exactly the situation—

Mr. Holt: I am making the request of Mr. Harrison to proceed, that is all I am doing.

Mr. Hogg: And I was making a request to allow me to ask him a question.

The Master: I cannot allow this to develop into a colloquy between counsel unless it is agreeable to Mr. Harrison. There is not the slightest question about his legal rights right at this juncture. The witness is on the stand and being cross-examined, and Mr. Harrison has got a right to go on with that cross-examination, and it is between himself and Mr. Hillman and nobody else, and so far as counsel on the other side is concerned, either by way of suggestion or inquiry or anything else, it is not open until they get him, not at this stage, unless Mr. Harrison is willing that it should be done. Now the hearing will proceed on that basis.

(The last question put by Mr. Harrison and the answer thereto were read by the stenographer.)

Q. How would you correct it?

A. By charging Virginia with $1,604,723.23, on page 13 of the printed record.

Q. Do I understand now that it was an inadvertence in that you did not charge to Virginia on January 1st, 1861, the total cost of the construction as representing its then value?

A. Yes, sir. I depended upon the stars preceding each of these

items to explain exactly how the charge was made up as far as page 13 of the printed record goes. I made a little different handling of it on page No. 7 of Defendant's Exhibit No. 3, 1863. The facts show in both schedules.

Q. Then the inadvertence did not occur in the 1863 schedule?

A. No, sir.

Q. Then you were wrong when you said it was an inadvertence in answer to my question a moment ago, were you not?

A. Yes, sir, I should have proceeded further and said it was an inadvertence in making out the schedules on different bases; I mean by that on a different plan of expressing them.

Q. In what respect do the schedules differ in the matter of the plan of expressing them?

A. I should have had on page 13 of the printed record a column headed value June 20th, 1863, and a column, disposed of for. Instead of that I had relied upon the stars to indicate the exact status of the case. In other words, the Defendant's Exhibit 3, 1863, page 7, is in a more complete and concise form than is page 13.

Q. We cannot then derive the meaning of your page 13 without reference to your page 7, can we?

Mr. Lilly: Pardon me, wouldn't it be well to say printed page 13?

Mr. Harrison: Yes.

The Master: That is page 13 of the print and page 7 of the blueprint.

A. Yes, sir, I think that reading page 13 of the printed record, together with the stars and foot notes, would indicate fully the state of the case.

Q. What evidence do you rely upon to give the value of the State's expenditure in the Blue Ridge Road January 1st, 1861, at your new value now given, $1,604,723.23?

A. The cost of construction up to January 1st, 1861, as shown on page 187, Ledger B, Internal Improvement Fund, State of Virginia, and expressed on page 27 of the printed record.

Q. Then you have taken the cost of the road and embraced that in your schedule and testimony as representing its value, have you not?

A. Yes, sir.

Q. Have you any other information about its value than the entry showing its cost?

A. None save the entry showing its final price obtained.

Q. Was it an operating road at that time?

The Master: You mean January 1st, 1861, is that the time you refer to.

Mr. Harrison: yes.

A. It was being operated, or its tracks were being run over by the Virginia Central Railroad.

Q. You do not know the location of this road, do you, the Blue Ridge?

A. It is what is now part of the Chesapeake & Ohio and contains the Blue Ridge tunnel.

Q. Do you know to what extent that work had been completed at that time?

The Master: You refer now to the tunnel?

Mr. Harrison: Yes, sir.

A. It had been completed almost entirely at January 1st, 1861. There was a further expenditure of in the neighborhood of $70,000 after that date.

Q. Did it have any equipment or rolling stock?

A. I do not know. I do not think it did, but I do not know.

Q. Why did you take the cost, the amount expended by the State on that work, as representing its value?

A. Because the State had expended up to that date that much actual cash on the road, presumably expended for value received in the building of the road.

Q. I observe by reference to the defendant's supplemental answer, page 54, that the accountant who made up the figures upon which that answer was based seems to have made the same inadvertence that you did—

Mr. Lilly: Now, I want to make a correction there. It is evident—

Q. —by charging to the State of Virginia $705,280.82 as the value of the State's interest in that road in January, 1861?

Mr. Lilly: If the Master please, that is not what the answer states, with due deference. It says, sales of securities purchased with common funds. It says that is what was received; it does not say it was the value as of January 1st, 1861.

The Master: I am inclined to think that is correct.

Mr. Harrison: But that is the value put on it in their summary.

The Master: Well, you are referring to page 54. Page 54, where that amount appears, is under a head which relates to the proceeds of securities.

Mr. Harrison: That is the value put upon that piece of work.

Mr. Holt: That is the sale price, clearly indicated.

Mr. Lilly: It corresponds with the $625,000, as in the Hillman schedule.

The Master: The figures are not identical.

Mr. Lilly: But it is meant to correspond, with a different basis of calculation.

The Witness: Your Honor, since we are on that point of the $705,280.82, I would call your attention to the fact that that $705,280.82, is made up of the two items shown upon page 27 of the printed record, viz., the amount obtained for the cost of the road, $625,348.03, and subsequent tolls received by the Virginia Central of $79,932.74.

By Mr. Holt:

Q. Received by or from the Virginia Central?

A. From the Virginia Central.

The Witness: I make this statement merely so that the two items can be identified.

By the Master:

Q. That is your suggestion is, that the aggregate of those two items produce $705,280.82?

A. Yes, sir, or within five cents of that, which happened to be five cents over on interest of bonds which was never adjusted.

Mr. Harrison: Now, I want an answer to my first question.

The Master: I can see where the aggregate occurs, but it is not a very happy statement of the items in the answer. That is, there is not anything in the answer that would indicate that detail. I can see where that computation of course produces the result. Just how significant it may be is a different matter. Of course strictly speaking in the first place this schedule does not show the value, and then strictly speaking it does not aptly describe that value. I suppose it is easy enough to see what is meant. Your proposition is that that item means this other item.

Mr. Holt: That schedule undertook to set forth the sales price or amounts received for certain securities, and into it, how-

ever, slipped the Blue Ridge, which was not a question of securities at all.

The Master: Precisely.

Mr. Holt: But it would represent its sale price as well.

Mr. Harrison: I do not see that there is any necessity of discussing those questions. My question was a very simple one, and I am going to put it in a different way.

Mr. Holt: This discussion was not addressed to your question.

Mr. Anderson: I want to call the attention of the Master to an inadvertence on the part of my friend; that item of $705,280.82, item No. 5 in Class C of the answer, is not mentioned in the answer with the meaning that my friend states, but it is recited there as being proceeds of sale of purchased securities with common funds of the two States by the State of Virginia, etc.

Mr. Holt: Yes, I say that it happened to get into a column representing the sale of securities when it was not the sale of securities at all.

Mr. Anderson: Sale of property.

Mr. Holt: Sale of the road, the property.

The Master: That is a matter to be dicussed later; it does not refer to Mr. Harrison's cross-examination.

Mr. Lilly: I was excepting to the accuracy of Mr. Harrison's question.

The Master: Read the question.

Mr. Harrison: I will put my question in a different way.

The Master: Then the pending question is withdrawn.

Mr. Harrison: And all that follows it.

By Mr. Harrison:

Q. The accountant who made up the statement upon which the supplemental answer of the defendant is based seems to have fallen into the same inadvertence that you did with reference to the value of the State's expenditure in the Blue Ridge Road in January, 1861, by not charging Virginia with the total expenditure as representing its value; isn't that true? I refer to page 54 of the supplemental answer.

A. Yes, sir, that is true. In his final summary he has presented as a charge against the State of Virginia the sales price.

Q. Now, let us take up the next item, Item No. 6 of Defendant's

Exhibit No. 3, page 13 of the printed record, Alexandria, Loudoun & Hampshire Railroad stock. What do you give there as the total amount of the State's holdings in that road January 1, 1861?

A. $993,248.

Q. You give no book value for that, do you?

A. No, sir.

Q. What do you give as the value of those holdings January 1st, 1861?

A. Referring to page 13 of the printed record I give the value of $49,662.05 with the double star which indicates that it is the sales value.

Q. That sales value was had after the war, wasn't it, realized after the war?

A. Yes, sir, November 27th, 1867.

Q. Now, what do you charge to Virginia as the value of her holdings in that road June 20th, 1863?

A. $1,017,248, the total amount expended up to that date.

Q. For the purchase of stock?

A. Yes, sir.

Q. Then you have made a difference in the values you put upon her holdings in that road by charging her with $49,662.05 as its value January 1st, 1861, and by charging her with $1,017,248, a total expenditure as its value in June, 1863. How do you explain that?

A. In the same way as we have explained at considerable length the matter of the Blue Ridge Road.

Q. How would you correct it if it needs correction?

A. In the same method, by introducing a column of value on January 1st, 1861, on page 13 of the printed record and entering thereon $993,248, as the value, and then having the disposed of value column on page 13 also wherein $49,662.05 would show.

Q. Haven't you a column on your January, 1861, schedule headed value, January 1st, 1861?

A. I have, yes, sir.

Q. And haven't you under that column opposite Alexandria, Loudoun & Hampshire Railroad Company $49,662.05 as representing the value of her holdings at that time in that road?

A. I have that amount entered there marked with two stars, which referred to a foot note, "states that it was sales value."

Q. I understand that, that it is sales value, that is shown on

your schedules very largely, and the foot note merely calls attention to that. Does the foot note explain the mistake in any other way excepting by mentioning the fact that that was the proceeds of the sale of her interest in that road realized afterwards? Does the foot note serve any other purpose than to indicate that the figures there were the sales price?

A. No, sir; it serves no other purpose than to indicate that it was the sales price.

Q. Then if I understand you, you want to correct your exhibit of January 1st, 1861, is that correct?

A. No, it is not.

Q. I thought you said it was a mistake.

Mr. Holt: No, that was your language.

Mr. Harrison: Or inadvertence then.

Mr. Holt: On the question of this road he has not used either word.

Q. Very well. Then I will ask you to explain why you have charged Virginia with $49,662.05 January 1st, 1861, as the value of her holdings in the Alexandria, Loudoun & Hampshire Railroad and charged her with $1,017,248, June 20th, 1863, as the value of her holdings, why did you do that and how do you account for that difference?

A. I have already explained that at considerable length, but I will do so again. The notation on page 13 of the printed record distinctly states that it is the sales value which I had considered there, $49,662.05. There is another column which shows the par value of that stock or the amount which had been expended by Virginia up to January 1st, 1861, viz., $993,248. In Defendant's Exhibit, No. 3, 1863, page 7, these facts were stated in a different manner, having two columns, one headed value June 20th, 1863, and the other one "Disposed of for." In the value June 20th, 1863, was entered the amount expended up to that time on the Alexandria, Loudoun & Hampshire Road. In the next column, "Disposed of for," was entered the amount which Virginia finally received for its stock in this road. I have relied upon the stars on Exhibit No. 13 to make my meaning clear on that page, and in putting it in "Value January 1st, 1861," I will admit these schedules would have been in better shape had they been made more in conformity with one another rather than left as they are.

Q. Is it a fact that you have charged Virginia as of January 1st, 1861, with $49,662.05 as the value of her holdings in the Alexandria, Loudoun & Hampshire Railroad? Page 13 of the printed schedule I have before me and I referred you to.

A. Yes, sir. That has been entered in the summary of the amount to be charged to Virginia for consideration in this case as $49,662.05.

Q. Is it a fact that you have charged to Virginia as of June 20th, 1863, $1,017,248?

A. Yes, sir.

Q. As the value of her holdings in this road?

A. Yes, sir.

Q. On that date?

A. Yes, sir.

Q. Is the first charge correct or do you wish to amend it?

A. If it needs amendment, page 13 should be amended as I have stated.

Q. What I will ask you, and you will have to determine whether it needs amendment or not, because it is your work and not mine, have you correctly stated as you intended to do the value of her interest in this road on January 1st, 1861, on your Exhibit No. 3, page No. 13, as $49,662.05?

A. No, sir. The amount therein entered should be $993,248.

Q. Then you made a mistake, did you not?

The Master: In place of $49,662.05?

The Witness: Yes, sir.

Q. Then you made a mistake in that exhibit, did you not?

A. I have stated right through this testimony, or the cross-examination I mean, that the expression of these amounts on the two schedules should have been synonomous and not left to be carried by the notations which I have made, and therefore the exhibit may be considered as erroneous in form.

By the Master:

Q. The simple question is did you make a mistake with reference to that item. Mr. Harrison has a right to an answer to that question. You can answer that and then you can explain in your own way. Is it or is it not a mistake. The question is, when you inserted in the schedule the item of $49,662.05 which ought

to be $993,248, Mr. Harrison wants to know whether that is a mistake or not, is that it?

Mr. Harrison: That is what I am asking him.

A. Yes, sir, $993,248, should be entered under value January 1st, 1861, instead of $49,662.05.

By the Master:

Q. Now then was it a mistake? What is the answer to that question? Was that entry under those circumstances a mistake, or was it not? Was it or was it not, and if it was, give your reasons.

A. It was a mistake.

Q. Now, then if you want to explain it go on and explain it.

A. I do. For the reason that the value of the stock on January 1st, 1861, should be considered as the amount of the investment in the stock in 1861, and the claim based upon that value; this in accordance with our method of treating this on June 20th, 1863. The alternative column should then show, upon page 13 of the printed record, the amount which was finally received for the stock in the same manner as has been done on page 7, Defendant's Exhibit 3, 1863.

By Mr. Harrison::

Q. Now I understand that you wish to correct your Exhibit No. 3, page 13, of the printed record, by substituting in place of $49,662.05 as the value of Virginia's holdings in the Alexandria, Loudoun & Hampshire Railroad Company with $993,248, the par value of the stock held by her in that road; is that correct?

A. No, sir; I do not propose, unless instructed to by the Court, to correct the exhibit; having given my testimony as to what I consider the proper amount should be considered there, and as the full information concerning the method of handling is contained upon page 13 of the printed record.

Q. Which of those items will you charge against Virginia in your summary, or have you charged against her in your summary?

A. I have only charged $49,662.05 in my summary.

Q. And you do not intend to correct your summary of 1861 by striking that charge out and putting in the greater charge?

The Master: I am looking for that summary of 1861, and I do not seem to find it.

Mr. Lilly: It was not introduced until the second sitting.

Mr. Harrison: **Let him answer my question.**

The Master: You may answer.

A. No, sir; unless instructed to by the Court I do not propose to.

The Master: Before we go on I want that summary of 1861.

Mr. Anderson: Unfortunately it has not been printed.

The Master: But I want it, because I have got to keep track of it.

Q. If Virginia should be charged with $993,248, January 1st, 1861, instead of with $49,662.05, why will you not correct your summary and charge her with the proper amount?

A. For the reasons that I have stated, with the explanation as given in full on both exhibits, and that it is the province of the Court and not of the witness to say what the amount is which should be charged against Virginia in this final settlement, and that having all the facts laid before the Court I deem it sufficient, unless instructed by the Court to make up the statement for its information and guidance on the plans which I have outlined in my explanation of this matter.

Q. Which amount, according to your judgment as the accountant making up this statement for the guidance of the Court and the Master, should Virginia be charged with—in your summary as of January 1st, 1861, on account of the Alexandria, Loudoun & Hampshire Railroad Company?

The Witness: Is that a proper question?

The Master: Yes.

A. $993,248.

Q. Why then would you not correct your summary and put in it the proper amount according to your judgment?

A. I have already answered that question.

Q. If you intend your summary to be of assistance to the court?

A. I think I have already answered that question sufficiently in this answer.

The Master: That is not a proper answer. Let me explain this to you, and we won't have any trouble. The cross-examination has developed the fact that did not quite appear before, which

entitles Mr. Harrison to ask this question; I am not going to discuss it in detail, but it is simply up to you to give the best answer you can to this question without reference to what you may have said before. It is a proper question, and you are to answer it without predicating your answer on what you may have stated before. Give the answer to the question right now.

The Witness: What is that question?

(Question repeated by stenographer.)

A. For the reason that I think the matter as it stands now is in sufficient form and fullness for the information of the court without making a summary in the method outlined.

Q. Unless you make the correction your summary will now, according to your judgment, be correct, will it?

A. No, sir.

Q. Then you think that you will assist the court and the Master by submitting to them a summary of results which you say does not truly represent your judgment as to what it should be?

A. Yes, sir; I deem with the explanation that I have made that the summary is sufficient.

By the Master:

Q. This cost of construction by the State of the Blue Ridge Railroad, I take it, is taken from the books of the State?

A. Yes, sir.

Q. And that I assume shows in detail what the cost of construction consisted of?

A. Yes, sir, it does.

Q. In what way is that divided in the account? Give me the large and salient items making up that aggregate?

A. It is spread out, if my recollection serves me, and I think it is correct, in detail, showing how much paid to contractors, showing how much paid for ties, rails, and all kinds of different things, all the usual construction expenditures, sometimes taking a page or a page and a half of detail to make up one entry which is entered during say the current quarter.

Q. Well, when did the construction begin? I think it is probably already in the record, but I would like to have it right here?

A. Your Honor, I will have to refer to the commencement of the construction of that Blue Ridge road.

Q. Can you give the year, without giving the date? The year

will be enough for my purpose; I simply want to get an idea about what period this covered.

A. I cannot do so without looking at the ledger. It will take but a moment, and I will give it to you. The stenographer will just leave a blank for it.

(The witness later supplied the date of the commencement of the work as September, 1850.)

Q. Is there anything to indicate how much of this road had been in operation prior to January 1st, 1861, if any?

A. Yes, sir; there had been tolls paid by the Virginia Central for the use of this road prior to 1861, and subsequent to that date.

Q. Is there anything on these books showing the cost of repairs or maintenance?

A. No, sir.

Q. That is, what I mean by that is, is there anything on these books af the State showing the cost of repairs and maintenance of this road during this period or any part of it?

Mr. Lilly: May I call your Honor's attention to the fact that the road was leased, and that would probably be in the Virginia Central's items?

The Master: That has not appeared. I rather got the impression that the tolls were tolls for the use of the tunnel.

Mr. Anderson: The State owned ten miles of the road, and the approaches on the east were several miles long, and there were two or three tunnels there.

The Master: What was this Blue Ridge road, a tunnel?

Mr. Anderson: Ten miles of road, including two or three tunnels.

The Master: Let us see if we can get this from the witness.

Q. I understand that the Blue Ridge road included about ten miles of construction, the principal part of which was tunnels, is that the information you get from the books?

A. I do not know concerning the length of the road or whether it was tunnels, that is what you might say is hearsay information as far as I am concerned. But I do know that this road was leased, practically leased by the Virginia Central for payment of tolls of both passengers and freight passing over this portion of the line, and was operated by the Virginia Central and presumably kept in repair as part of their lease, as no charges as far as I can

find out were ever made against the tolls of the road or its receipts for operating.

Q. Then as I understand it, in its incomplete condition, the Virginia Central leased it, and under this lease the State of Virginia was continuing to complete the road up to and beyond January 1st, 1861, notwithstanding that it had already been leased and was being operated by the Virginia Central, is that the practical condition?

A. Yes, sir, with this explanation, that they made the agreement with the Virginia Central road that they should complete this construction, and that they would allow them a rebate on their tolls to the extent of the sum which they expended to complete the road. There was $90,000 really expended, but there was only charged up $70,000 as the amount which Virginia assumed of that, through cancellation of the West Virginia Central Railroad Company's tolls, which were due it.

Q. And that was charged to construction?

A. Yes, sir.

By Mr. Holt:

Q. You don't mean West Virginia Central?

A. Virginia Central.

By the Master:

Q. Was there any account of depreciation in connection with the road?

A. No, so far as I know, none.

Q. Was there any construction upon the part of the State of Virginia after the leasing to the Virginia Central except through its insisting on tolls and under and by virtue of the terms of the lease?

A. No, sir.

Q. So that the bulk of this item of construction had been incurred by the State prior to the lease to the Virginia Central?

A. Yes, sir.

Q. What was the date of the lease to the Virginia Central?

A. I will get that for your Honor.

Q. Put the date in the record. You need not stop for it now.

A. The first tolls were paid in September, 1858, by the Virginia Central.

Q. That is as near as you can get to it?

A. Yes, sir.

Q. Is it a fact that after the lease to the Virginia Central the increased cost of construction that appears upon the books is the result of the application of sums that were received or rebated on account of the tolls under the lease?

A. Yes, sir.

The Master: That covers that.

Q. Is there any fixed percentange of depreciation that is applied to the construction account of a railroad and its operation, and if so, what is it?

A. No, sir; there is no fixed percentage. Each road is allowed to make that depreciation, subject to the approval of the Interstate Commerce Commission, for itself. The whole proposition on maintenance of way and structure accounts, which includes the roadway and track and the buildings, is that the buildings depreciate to the extent of about five per cent. per annum and that roadway and track are taken up by renewals and by means such as might be called consolidation of the roadbed through its use, so that there is no depreciation on roadbed and track of a railway. Bridges being structures, of course, are subject to depreciation and are generally considered to have twenty-five years of life.

Q. Which would be four per cent. per annum depreciation?

A. Yes, sir.

Q. You say that is an Interstate Commerce rule?

A. Well, that is the general method of handling it with all roads, though the Louisville & Nashville Railroad charge up on depreciation their roadbed, rails and ties. They are as far as I know the only railroad that do it.

Q. What do they charge up?

A. They charge up two per cent. on roadbed, five per cent. on ties and I think seven and a half per cent. on rails. They are very liberal in their charges to operating accounts, and depreciation accounts are now included in operating accounts.

Q. And of course the depreciation upon a roadbed and operating factors depends very largely upon the amount expended for repairs and maintenance?

A. Yes, sir.

The Master: That is all.

By Mr. Harrison:

Q. Let us take up item No. 7, Defendant's Exhibit No. 3, page 13 of the printed record, Winchester & Potomac Railroad loan, which you show to be $83,333.33, which amount you have charged to Virginia, January 1st, 1861, at $83,333.33. Why did you do that?

A. Because that was the amount which was entered on page 241, Ledger B, Internal Improvement Fund, as the par of the loan and was also shown on folio 175 of Journal D, Board of Public Works, under September 30th, 1873, as the amount received in full settlement of this loan.

Q. Settled how?

A. It was settled by the payment of bonds, which included not only the principal, but included the interest or unpaid proportion of the annuity, as this Winchester & Potomac had been boiled down to an annuity instead of calling it an interest charge.

Mr. Harrison: This matter is covered by the Master's report, page 64.

The Master: Is there any question but that the facts are accurately stated in my report in relation to that item, on either side?

Mr. Harrison: No, sir; they are all correct.

Mr. Lilly: I think the facts are quite clear in regard to it.

The Master: Yes. As I understand, we have gone through items 4, 5 and 6, and do I understand that it is conceded that the schedules submitted by West Virginia are accurate so far as they are a statement of figures and the computations made on the schedules, that there is no criticism of any of the items except such as may be inferred from the cross-examination?

Mr. Harrison: So far as mathematical accuracy of the figures I take it there is no error in the figures.

The Master: I would like to make this inquiry, so far as counsel for West Virginia are concerned, we have this schedule on page 13 of the printed record stated under head of values January 1st, 1861. Am I to understand that that represents the claim that West Virginia proposes to make and that the sums stated there under that heading are sums by which they expect to be bound so far as the amounts are concerned? I will leave that question to be answered when we come back.

Mr. Holt: We are looking at the figures referred to. As I understand it, this is Exhibit No. 3, page 13.

Mr. Hogg: The aggregate there is $9,163,256.70.

The Master: Yes; we will let it suspend for a moment then. We suspend now until half past two.

At this point a recess was taken until 2:30 P. M.

AFTER RECESS.

Mr. Holt: Your Honor, at the adjourning hour you requested of the counsel for West Virginia to know whether they intended to rely on the last column in Defendant's Exhibit No. 3, and the sum total thereof on page 13 of the printed record, or whether they desired to correct the items therein in accordance with the development upon the cross-examination this morning, which related to the Blue Ridge Railroad Company and the Alexandria, Loudoun & Hampshire Railroad Company. We desire to make the correction in that schedule, and also the summary based upon it, so as to conform the situation to the facts. Mr. Hillman prepared two schedules, one for 1861, and a corresponding one for 1863. His columns were somewhat different in 1863 from what they are upon the schedule for 1861. And in the case of the Alexandria, Loudoun & Hampshire Railroad Company he carried forward $49,662.05 as the amount of the claim on account of that item that we would make against Virginia, that is 23 1-2 per cent. thereof, the $49,000 representing the sales price of Virginia's interest in that road instead of $993,248, which was the cost of construction. Now the cross-examination developed the fact to be that in connection with the Blue Ridge Railroad Company, built by the State, he took as the value to be claimed by us the sales price of $625,348.08 instead of $1,604,723.23. And we desire to correct the schedule in that particular also. Now it will develop that this same inadvertence occurred in the case of the Virginia & Tennessee Railroad loan, where the amount of the loan finally paid, $886,685, is claimed by us in the exhibit instead of $1,000,000. We desire to make that correction. Also in the case of the Roanoke Navigation Company, $3,832, as the sale price is claimed, instead of $80,000, the purchase price of the stock. And finally, in the case of the Alexandria Canal Company stock, the sales price of $764.47 is claimed by us in this schedule,

when according to the explanation of Mr. Hillman the cost price of the stock, $272,000, should be claimed. And those matters should be carried forward into the summary schedule.

Now then, it is not proposed to withdraw either one of these schedules, but let them lie in the record as they are; but as soon as they can be prepared, add the new schedules thus readjusted, because that represents our contention. Mr. Hillman, in other words, has already in the body of his testimony made the corrections, but has declined to carry that correction into the schedule, which now we request him to do. I may say in addition to that, however, and in justification of this situation, that Mr. Hillman has labored under adverse circumstances, being away a good portion of the time, and troubled with distress of mind, and the different mode of getting up the two forms of schedules for 1861 and 1863, upon these items was a matter that might very readily have been expected to have resulted under the circumstances.

The Master: Proceed.

Mr. Lilly: I might state that Dr. Hogg is feeling indisposed this afternoon and will not be here for some time.

Mr. Anderson: I want to suggest to our friends on the other side that a more serious difficulty confronts them in that in their answer they have committed themselves to the propriety of the set-off exactly in the form in which it is alleged in the answer as to these items. I do not know that a party will be allowed to change pleadings of that kind at will.

Mr. Holt: We are not asking to amend the answer. We will take care of that proposition when we reach it. We understand your contention, General Anderson.

The Master: There cannot be any amendment of the pleadings.

Mr. Holt: No, sir, I do not ask that.

The Master: If this explanation is in the record that takes care of it. The cross-examination will go on and develop their point of view, whatever they see fit to develop in relation to it. I do not think you need to encumber the record with a new schedule. The explanation I take it is clear to me and also to the other side. At any rate, they will proceed with their cross-examination and develop whatever they have occasion to.

Mr. Holt: Our idea was for Mr. Harrison to go on at this moment, but that it might be made clear by putting in that corrected schedule later on.

The Master: If you want to do that, all right, but as far as I am concerned, I understand it.

Mr. Lilly: We would prefer to file a supplemental schedule.

The Master: If there are any supplemental schedules to be submitted, they should be prepared and submitted before Mr. Hillman leaves the stand, so that the other side can cross-examine on them. You can do that between now and to-morrow.

Mr. Lilly: They are advised as to the purport of the amended schedules.

The Master: While this may be obvious what the schedules will be, still they ought to be submitted before Mr. Hillman leaves the stand, so that the other side can cross-examine if they wish in relation to it.

Mr. Harrison: I do not intend at this point to discuss the question, if your Honor please, but I do not wish to be understood as waiving our right of objection to the proposal now to amend schedules that have been prepared and tendered and put in proof by counsel on the other side as representing the case upon which they will rely. The mistakes, so far as they relate to form, are perfectly immaterial. We are making no objection to the forms of the schedules but to the substance of them.

Continuation of the cross-examination of

CONWAY W. HILLMAN.

By Mr. Harrison:

Q. I refer you now to item 8 in Defendant's Exhibit No. 3, page 13 of the printed record, which item is Virginia & Tennessee Railroad loan, $1,000,000. What value do you give that loan on that schedule as of January 1st, 1861?

A. $886,685.

Q. How do you arrive at that? Upon what evidence do you rely for that statement?

The Master: What schedule are you referring to now Mr. Harrison?

Mr. Harrison: Page 13 of the printed record, the same one we are dealing with.

Mr. Anderson: It is item No. 8.

The Master: I get it, yes.

A. Upon the final payment of that loan, as shown in detail on page 31 of the printed record.

Q. Does that show the final payment of the loan?

A. It shows the final payment on the loan, not of the loan.

Q. By reference to the sub-sheet that you have called attention to, I observe such payments are set forth, with the dates, as follows: Payment on above loan made as follows: June 19th, 1863, $200,000, June 30th, 1863, $300,000, August 6th, 1863, $100,000, August 7th, 1863, $100,000, September 11th, 1863, $186,685, making a total of $886,685. Are those the payments to which you referred?

A. Yes, sir.

Q. Were not those payments repudiated by the Board of Public Works?

The Master: What is the trouble about that Mr. Hillman? Do you know anything about it? Take all the time you want, but I do not want to wait too long.

A. One-half of this loan was afterwards turned over by the Board of Public Works to the Literary Fund and marked by them as one-half refunded to them because of a resolution of the Board of Public Works of even date. I have a copy of that resolution, which has been furnished me, which I could not find at the time.

The Master: Is that what you refer to, Mr. Harrison?

Mr. Harrison: Yes.

The Master: I do not want you to understand that you are not to take plenty of time, but if you had that fact in mind I do not like to delay.

Mr. Lilly: He was trying to hunt the paper.

The Master: There are so many of these delays that it takes up a lot of time. I want Mr. Hillman to take all the time he needs; if he can give an oral answer and then he needs further time for the detail or any original memorandum, why then we may decide that later we will have the original memorandum come along. You shall have all the time you want to make a full and complete statement, but I do not like to wait for the detail when we can have the detail coming along a little later and save time, perhaps.

The Witness: I would say with reference to that matter then, your Honor, that the resolution which I saw afterwards, is

not at all clear as to what was authorized to be done, at least to my mind, or what was done, and that there seems to be no further entry than the one which I have mentioned of the Board of Public Works, handing over to the Literary Fund one-half of the amount which had been paid in on this loan, whether from its own resources or not, I do not know.

By the Master:

Q. Now, you will produce that resolution as soon as your assistant can bring it in?

A. Yes, sir.

The Master: Can you go on from that, Brother Harrison?

Mr. Harrison: Yes, sir; I will go on.

By Mr. Harrison:

Q. Now, my question was if those so-called payments had not been repudiated by the Board of Public Works.

Mr. Harrison: I would like to know, if the witness knows, whether that is a fact or not?

A. I do not know.

Q. Did you examine in connection with this loan, Journal N of the Board of Public Works?

A. No, sir; I do not think that I did.

The Master: What is that journal, a book of original entry?

Mr. Harrison: Yes, sir.

Q. Then I call your attention now to a resolution of the Board of Public Works adopted Tuesday, February 4th, 1868, found on pages 249, 250 and 251 of Journal N, Board of Public Works, dealing with that specific subject.

Mr. Holt: What is the date of that journal entry, Mr. Harrison?

Mr. Harrison: February 4th, 1868.

Mr. Holt: A payment made in 1863?

Q. I will read at this point the following extract from the minutes of the Board: "And, whereas, during the late war, and while the authorities of the State Government at Richmond City, adhering to the Confederate States, and when and while the said Railroad Company had no right to pay and no officer of said Government had any right to receive payment of the principal or interest or any part thereof, specified in the mortgage aforesaid"—

that refers to the original mortgage of one million dollars—"acceding to the terms thereof according to law, under and as recognized by the said State Government or otherwise, in whatever currency or money which might be tendered, yet the said Second Auditor of said State Government received from the president of the said Railroad Company in pretended satisfaction of the debt and interest, then not due, but secured by said mortgage, such sums in Confederate Treasury notes at par, though grossly depreciated and almost worthless, to-wit: on the 26th day of June, 1863, $200,000; on the 30th of June, 1863, $300,000; on the 6th of August, 1863, $100,000; on the 7th of August, 1863, $100,000, and on the 11th of September, 1863, $186,685, in all $886,685; which act of the Second Auditor was unauthorized, illegal and void. And, whereas, the Commissioners of the Sinking Fund, at a meeting on the 6th of December 1864, as appears by their records, reciting that said act of said Second Auditor was unauthorized and that they had no control over said Confederate Treasury notes other than to return them, ordered that said Second Auditor return said notes to said company by his warrant on the Treasurer on account of the amount paid into the Treasury without authority. And, whereas, in pursuance of said order the said Second Auditor, made and presented to the president of said Railroad Company, his warrant on the Treasurer, and the said President refused to receive the same, by reason whereof the said Treasury notes unlawfully received remained in the Treasury until they perished; and, whereas, it is represented by this Board that the funds of the said Virginia & Tennessee Railroad Company had been attached at Knoxville, Tennessee, whereby the receipts and interests of the Board and the Commonwealth are jeopardized, and it seems to appear necessary and opportune that some measures should be adopted to protect the receipts and interests aforesaid, it is, therefore, resolved, that the principal and interest of the said loan of $1,000,000 to the Virginia & Tennessee Railroad Company, falling due after the 1st day of July, 1863, according to the terms of the mortgage of said company above mentioned, remain wholly unpaid and due to the Board of Public Works of Virginia for the Commonwealth of Virginia, as also the interest on the several arrearages, resolved that the receipt of the Confederate currency by the Second Auditor, by the said Virginia & Tennessee Railroad Company, or an officer

thereof above mentioned, was wholly unauthorized, illegal and void, and constitute no payment or discharge of the indebtedness of the said Company described in and secured by the aforesaid mortgage. Resolved, that the Governor be, and he is hereby authorized and requested to adopt such measures as he may deem proper for the protection of the rights and interests of the Board and the Commonwealth, secured by the mortgage aforesaid, now jeopardized by the said attachment at Knoxville, and that he adopt such other measures as he may deem necessary and proper for securing the payment of the principal and interest due on the said mortgage." Signed, F. H. Pierpont. And the Board adjourned.

Now, I will also call your attention to and read into the record from the record book of the Sinking Fund under date of December 5th, 1864, the following: "Present all the Commissioners. Whereas, it appears that the Virginia & Tennessee Railroad Company has paid into the Treasury of the State of Virginia to the credit of the Commissioners of the Sinking Fund the sum of $886,685.47 in Confederate States Treasury notes on account of the debt of the company for money loaned to the same above State; and, whereas, it further appears that such payment into the Treasury was made without authority of the Board of said Commissioners of the Sinking Fund and after a decision by said Board that they had no authority to receive it and that this Board has no other or further control over said money than to return it, it is therefore ordered that the Second Auditor do issue his warrant on the Treasury in favor of said Virginia & Tennessee Railroad Company for the $886,685.47 in Confederate States Treasury notes on account of the moneys so paid into the Treasury without authority." Neither of those resolutions you say you have seen or heard of in the course of your investigation?

A. I had heard of them but was unable to locate them. I had heard of the resolution wherein that money was returned for certain reasons to the Sinking Fund, but I could find no reason for its return and no source from which it was returned to them.

Q. Did you say returned to the sinking fund?

A. I think it was returned to the sinking fund.

Q. Returned to the sinking fund or by the sinking fund?

A. To the sinking fund, I think.

Q. Who returned to the sinking fund?

A. That is what I do not know?

Q. I am talking about its being repudiated by the Board of Public Works as well as by the sinking fund and ordered to be returned to the railroad company, and my question was whether the two resolutions bearing on that subject which I have just read had been called to your attention before.

A. No, sir; I had not seen them before.

Q. Did you not state in answer to a question propounded by the Master on your direct-examination that the full amount of this loan of $1,000,000 was due to the Commonwealth of Virginia at the time it was transferred to the Atlantic, Mississippi & Ohio Railway? I refer you to your direct examination, page 548.

A. No, sir; I did not so testify.

Q. Then I will read your answer in the record. At page 548 of the typewritten record the question is as follows: "Was that full amount due at that time on the $1,000,000?" The $1,000,000 was referred to in the question before and that time was July 1st, 1870. Your answer was, "Yes, sir." Do you wish now to correct that answer?

Mr. Holt: Look at your testimony if you want to.

The Witness: I want to look at the testimony. I think there are some things that preceded that that explain fully what I mean.

Mr. Holt: The question is what did you say in answer to the question?

(The witness refers to the typewritten record of his testimony.)

The Witness: Yes, sir. My direct testimony in answer to your question reads as has been stated by you.

The Master: His question is whether you want to correct it or not.

The Witness: Yes, sir, I certainly do. What I had intended to say there and what I felt very sure I had said was made plain, and the reason for my reading the record was that the full amount of the loan of $1,000,000 was due on January 1st, 1861, and that the balance unpaid, whatever it might be, had been transferred by this $4,000,000 transaction and no money carried out into the body of the transaction to represent it. I see that I have, however, made the statement baldly that the loan on that day was $1,000,000 and further stated that I would have carried it out for $1,000,000 into the margin. I am surprised that I was led into that or that I said that, as I had no intention of saying it, and at the same time

I had a full recollection that I had said an entirely different thing. It was merely to state that the loan had not been paid in full that I emphasized the matter that all the State's right and title in that loan had been carried into that transaction though no sum had been carried opposite.

Q. You have charged in your January 1st, 1861, schedule, which we now have before us, page 13 of the printed record, the alleged payments aggregating $886,685, as the value of that $1,000,000 on January 1st, 1861, whereas I find on page 7 of the manuscript exhibit, the blue print, under head of value June 20th, 1863, you have charged $800,000 as the value of that loan on that date. How did you arrive at that value you have placed upon this loan for June 20th, 1863?

A. By deducting from the face value of the loan a payment of $200,000 on June 19th, 1863.

Q. Where did you get that date from, June 19th, 1863?

A. Cash book No. 10, Board of Public Works.

Q. Do I understand that you wish to correct the figures stated in either or both of these schedules for January, 1861, and June 20th, 1863?

A. Yes, sir.

Q. In what respect?

A. In making the entry on page 13 of the printed record $1,000,000, instead of $886,685.

Q. Any other correction?

A. No, sir.

Mr. Holt: Do you mean with respect to the other roads or just that one item, Mr. Harrison?

Mr. Harrison: I am dealing with those two dates, but that particular item. I have not gone to any other as yet.

The Master: Do you include that particular item in your statement?

Mr. Holt: Yes, sir.

Q. If the $200,000 payment which you have just referred to as made on this loan of June 19th, 1863, was repudiated, then you should amend the figure you have in your June 20th, 1863, schedule, should you not?

A. I am by no means certain on that point as—

The Master: Is not that a matter of computation right on its face? Mr. Harrison's question is if that payment of $200,000 was

eliminated or repudiated, whether that would not result in a change from your standpoint of $1,000,000.

The Witness: If it was returned, yes, sir.

Mr. Holt : It depends upon what you mean by repudiated.

The Master: Eliminated; I assume he means eliminated.

Mr. Holt: The fact shows the payment in 1863 and repudiation in 1865.

The Master: Mr. Harrison's question was put upon the assumption—he does not concede that it was repudiated by answering on that assumption, that is, he does not to my mind. Am I correct about that, Mr. Harrison?

Mr. Harrison: Yes, sir.

The Maser: Of course the answer to that question is simply a matter of computation. It is obvious right on its face.

Mr. Holt: The witness does not understand all those things.

The Master: He has got to answer it in one way.

Q. Now will you tell us what became of the State's interest in that $1,000,000 loan to the Virginia and Tennessee Railroad?

A. It was turned over to the Atlantic, Mississippi and Ohio Railroad Company.

Q. When? The date of the deed is December 22nd, 1870. Have you seen the deed?

Mr. Holt: Let him find out whether his date agrees with yours.

Mr. Harrison: Very well.

A. July 1st, 1870.

Q. Where did you get that date from? That must be the date of the act.

A. In answer to your question I would say that the computation of interest was made up to July 1st, 1870, and therefore the settlement took place as of that date.

Q. Now how much of the loan was turned over by the State?

A. That is an indeterminate quantity. The sixth item reads, and the sixth item is this loan, all rights, claims and privileges which belong to the State of Virginia on account of the loan of $1,000,000. No amount carried out.

Q. If $886,685. had been paid, why should the amount be indeterminate?

A. Because it is not memtioned.

Q. That would not leave it inderterminate, would it?

A. No, sir; but it is not mentioned in the transaction or in the

journal entry, and therefore denominated inderterminate.

Q. Do you mean by that that it had not been mentioned in the deed when you say indeterminate?

A. I mean that it had not been mentioned in the journal entry.

Q. Then I am correct, am I, in understanding you mean by indeterminate, not mentioned?

A. Yes, sir.

Q. According to your schedule you could determine the amount that had been paid over, could you not?

Q. Yes, sir; I could.

Q. Turned over, I mean?

A. Yes, sir; I could.

Q. And when you say turned over to the Atlantic, Mississippi & Ohio road, do you mean that that was one of the items, that is to say, that is to say this million dollar loan made by the State to the Virginia & Tennessee Railroad, was one of the items turned over to the Atlantic, Mississippi & Ohio Railway Company as part consideration for their $4,000,000 second mortgage which was given by that road to the State of Virginia?

A. No, sir.

Q. What do you mean?

A I mean the article sixth which I have read, all claims, rights and privileges which belong to the State of Virginia on account of loan of $1,000,000. The distinction is very marked in the wording as between the claims, rights and privileges under the loan, and the turning over of the loan itself at its face of $1,000,000.

Q. Do you mean to say that no part of the loan was turned over to the Atlantic, Mississippi & Ohio?

A. I do not know whether it was or not. According to my interpretation of the records of Virginia the sum of $113,315 would have been turned over to the Atlantic, Mississippi & Ohio Railroad in that transaction.

Q. Then according to your interpretation $113,315 of the $1,000,000 loan to the Virginia & Tennessee Railroad was turned over to the Atlantic, Mississippi & Ohio Railroad in 1870, as part consideration for the mortgage of $4,000,000 given by that road?

A. According to the interpretation which I would make if I had made any, yes, sir.

Q. Well, have you in your computations included any part of that loan in the $4,000,000 mortgage transaction?

A. No, sir.

Q. And that item is charged against the State in addition to the $4,000,000 transaction that we are speaking of?

A. Yes, sir.

Mr. Harrison: Now I will take the next item.

The Master: Before you leave that, I have not stopped to figure it, but does the total of the items found in Defendant's No. 6, page 56, of the printed record, aggregate $4,000,000, or does it aggregate more than that?

A. It aggregates more than that.

Q. Before you leave that item, or before you go any farther with it, is there any evidence in existence other than this resolution of the Board of Public Works, as to the nature of that transaction which resulted in an apparent credit upon the amount of this million dollar loan having been in Confederate Treasury notes during that period?

Mr. Harrison: None that I know of, except the Act of Assembly and the deed of trust, in which the million dollar loan is referred to.

The Master: Does the Act of Assembly set out what you claim is an attempted payment?

Mr. Anderson: No, sir; not explicitly.

The Master: Then the only evidence in existence as to the character of the payment is found in this resolution of the Board of Public Works for the Sinking Fund?

Mr. Anderson: Yes; I remember it is referred to in one of the messages of March, 1870, of Governor Walker, who was then Governor of the Commonwealth, in which he shows that the claim had not then been paid.

The Master: What I wanted principally to know was whether there was extant any contemporaneous evidence of the payment. These resolutions are declarations subsequent to the act.

Mr. Anderson: The resolution of the Sinking Fund was afterwards.

The Master: Well, the next year.

Mr. Anderson: They refer to the fact that there was no authority in the Second Auditor to receive payment at all.

The Master: I understand that.

Mr. Anderson: Under the law then and under the law now, the Second Auditor had no right to receive any money at all.

The Master: My attention of course can be called to the law relating to that. But what I wanted to get at now was whether there was anything tending to the establishment of the fact, other than these resolutions.

Mr. Harrison: I intend to put into the record at the proper time the Act of February, 1853, under which the loan was made, and showing the terms upon which it was to be paid.

The Master: Of course I understand that at present nothing but cross-examination is going on.

Mr. Harrison: The loan was repudiated because they had no authority to take it.

Mr. Holt: Do you want all this to go down?

Mr. Harrison: No, that can be taken out.

The Master: Of course these other matters are matters for later consideration.

By Mr. Harrison:

Q. Now I come to the next item, No. 9, Defendant's Exhibit No. 3, page 13 of the printed record, as follows: South Side Railroad Company loan, $800,000. What value do you put upon that loan in your schedule under date of January 1st, 1861?

A. I have entered no value opposite it.

Q. Then according to your schedule it had no value on that date; that is correct, is it not?

A. Yes, sir.

Q. Now I find on your schedule, blue print, page No. 7, June 20th, 1863, you have entered that loan as having a value of $800,000 on June 20th, 1863. If it had no value on January 1st, 1861, how did you conclude that it had a value of $800,000 on June 20th, 1863?

A. The par of the loan—

Mr. Lilly: Face Value.

The Witness: The face value of the loan was entered as its value on June 20th, 1863. The face value of the loan should have been entered on the schedule of January 1st, 1861, page 13.

Mr. Holt: That was one of the items is my statement likewise.

Mr. Harrison: I do not think you mentioned it, Judge, but that is immaterial. I have no doubt that you intended to mention it.

The Master: I do not think you did mention it, Judge.

Mr. Holt: I had them checked on a book here.

The Master: The Judge's statement may be amended.

Mr. Harrison: I make no point of that.

The Master: I do not think you did mention it as a matter of fact.

Mr. Holt: I would not swear to it at all.

Q. I observe on your 1863 schedule immediately opposite the entry of $800,000, the amount of this loan, as constituting its value June 20th, 1863, you have written under the column "disposed of for" as follows: "Turned over to A. M. & O." If it was turned over to the A. M. & O. and covered by the mortgage of four million dollars, the second mortgage, does not this constitute a double charge?

A. No, sir, I hardly think it does.

Q. Why not?

A. Because the fourth item in this journal entry reads: "All claim the State may have versus the South Side Railroad Company on account of the principal and interest due upon the loan of $800,000," but no amount is carritd out into the total column to show how much there was due on this loan, either principal or interest. It is again merely a matter what I considered at the time as of a release of possible claims and not a transfer of a principal amount.

Q. The fourth paragraph of the deed under which the four million dollar mortgage was created relating to this particular loan reads as follows: "All and whatever claims, rights and privileges which are accrued to the State of Virginia under and by reason of a deed executed by the South Side Railroad Company to the Board of Public Works to secure the payment, principal and interest, of a loan of $800,000, made by the Commonwealth to the said Railroad Company under an Act of the Assembly passed February 6th, 1853, and modified by an Act of Assembly passed January 18th, 1866." Do I understand you now to say that you do not for the purposes of your statement consider that any part of the loan was turned over, transferred or assigned to the Atlantic, Mississippi & Ohio Railroad Company under and by virtue of that deed?

A. No, sir, you do not.

Q. Well, what have I to understand?

A. You are to understand exactly what is said, that all claim

the State may have versus the South Side Railroad on account of the principal and interest due upon the loan of $800,000, which simply means that any title or right or anything that they had was turned over to them and that no amount was specifically mentioned as the value of that loan; it was merely rights under a loan of that amount. This opinion is further influenced by the immediately preceding item of this transfer which is on page 56 of the printed record, and numbered 3 under bonds and notes, where it says "Unpaid balance of the $300,000 loan on the Norfolk & Petersburg Road," and that item is carried out, $163,000, in the amounts which are set out as cancelled by this loan. Therefore, as no specific amounts were carried out as unpaid balances and merely their rights under it surrendered in the journal entry, I have not included any value in this $4,000,000 as far as money goes.

Q. Did you find that anyone else had any interest in this loan except the State of Virginia?

A. Not that I know of.

Q. Did you find that any part of it had been paid off?

A. No, sir, I did not find any record of any part of it being paid off.

Q. Then if no part of this had been paid off and no one had any interest in it but the State of Virginia and she transferred all her right and title in it to the Atlantic, Mississippi & Ohio, would not that have carried the entire loan?

A. Yes, sir; I think that would have carried the entire loan.

Q. Then if that is true why isn't this a double charge?

A. For the reason that there is no sum specifically entered in the $4,000,000 is the compensation, amount to considerably more and that the sums which are mentioned in the transaction where the $4,000,000 is the compensation, amount to considerably more than the $4,000,000.

Q. But here is a specific sum mentioned in the assignment, all the State's right and title in a loan of $800,000. If none of it had been paid and no one else had any interest in it but the State of Virginia, why then was not the whole of the $800,000 mentioned transferred by the assignment? You have just said, did you not, that that would be true?

A. Yes, sir.

Q. Then if that is true why is this not a double entry?

A. I made the statement quite frequently—

The Master: Is that the only reason that you can give that it is not a double entry?

The Witness: Yes, sir.

Q. That is just what I was going to ask you, if that is the only reason that you can give.

The Witness: No, your Honor.

The Master: If you have another reason, go ahead and give it.

The Witness: No, sir; the reasons would be simply in amplification and repetition of what I have already stated. It is not necessary to repeat that.

The Master: Then those are all the reasons?

The Witness: Yes, sir.

Mr. Holt: May I ask a question right there to clarify it?

The Master: I have no objection unless they have.

Mr. Harrison: I would rather you would reserve it.

Mr. Holt: I will do so then.

Mr. Harrison: Because I think I have clarified this thing. I have no doubt that you have got some clarification.

Mr. Holt: One thing is axiomatic to my mind, which would not take more than three words to explain. I will not persist.

Q. Now, will you turn to page 32 of the printed exhibits, called asset No. 8, Class C, wherein you state as follows: "The loan itself, asset C-9, was never paid." That is the South Side Railroad Company loan of $800,000, is it not?

A. Yes, sir.

Q. Then that statement was followed with this further statement: "It was turned over with the stock to the A. M. & O. R. R., with other roads for $4,000,000." If according to your testimony as shown there the loan was never paid but was turned over as you also note to the A. M. & O. and other roads for $4,000,000, why did you charge it under Class C against Virginia?

A. I did not charge the $4,000,000 to the State of Virginia, as will be seen by reference to my summary of charges.

By Mr. Anderson:

Q. You mean your summary for 1861?

A. Yes, sir.

By Mr. Harrison:

Q. I am not at all concerned with what you had included in what you describe as $4,000,000 in your summary, but I directed your attention to your own statement wherein you say that the State of Virginia turned over all her right, title and interest in that loan of $800,000 to the Atlantic, Mississippi & Ohio Railway Company, which was secured by a general mortgage, which along with a number of other items aggregating a large amount was secured by a mortgage for $4,000,000. If that is true that the State's interest in the loan which included its interest in the entire loan, as it has not appeared that any part of it was paid off, was turned over to the Atlantic, Mississippi & Ohio Road, my question is why have you charged it as a separate charge against Virginia?

A. Because the $4,000,000 which you mentioned is not charged against the State of Virginia; it is not on the summary and it is not charged.

Q. Is that an additional reason now that you are giving for it not being a double charge?

A. It is the reason that it is not a double charge.

Q. It is a new reason, isn't it?

A. It is a new reason and it is the reason why it is not a double charge.

Q. You were asked a little while ago by the Master if you could give any further reasons than the one you had already given, and you said you could not except by amplifyig what you had already said. Now, you are furnishing us with a new reason, are you not?

A. Yes, sir, I am. The answer before had reference to the fact that this was included in a statement wherein I showed that certain items were disposed of for $4,000,000. That $4,000,000 was never charged by me to the State of Virginia and therefore items of duplicate charge do not enter into the account at all.

Q. The State of Virginia turned over to the Atlantic, Mississippi & Ohio, or rather assigned to the Atlantic, Mississippi & Ohio, a number of debts and claims due to her, considerably in excess of $4,000,000, did she not?

A. Yes, sir.

The Master: There were fourteen items in all.

Mr. Harrison: Quite a number of them.

The Master: Yes, fourteen.

Q. And they footed up an amount considerably in excess of

$4,000,000, but they were all turned over for the $4,000,000, were they not?

A. Yes, sir, they were. But we made no claim for the $4,000,000 in our exhibits or in our summary.

By Mr. Anderson:

Q. Either 1861 or 1863?

A. Either in 1861 or 1863. Our claim for those securities was based upon an entirely different computation.

By Mr. Harrison:

Q. What does your 1861 exhibit show that you claim?

A. $4,276,044.39.

Q. And what does your exhibit for 1863 show that you claim?

A. $4,566,015.61.

Q. Then in both cases you charged more than $4,000,000, didn't you, to the State of Virginia?

A. Yes, sir.

Mr. Anderson: I have here $4,487,000.

Mr. Lilly: I expect that was changed.

The Witness: This will be found upon page 57 of the printed record. The 1863 sum will be found on Defendant's Exhibit 6, 1863, page 45 of the blue prints.

Q. On page 57 of the printed record, on your Exhibit No. 6, you have not extended any value opposite the South Side Railroad Company loan of $800,000, have you?

A. No, sir.

Q. You have marked opposite that no claim, no claim, too indeterminate.

The Master: That is struck out.

Mr. Harrison: I understand.

Q. You desired that struck out, you say?

A. Yes, sir.

Q. Because that was a memorandum you had made for your private guidance, did you not?

A. Yes, sir.

Q. Do you mean by that that your private judgment was that it was no claim?

A. No, sir; the matter was that it had been considered in other respect, that these items had been taken up before, and that what

balance would be left over, if any, or if payments had been made would be too indeterminate for me to make any notation of them at this point. I had afterwards determined just that there were no payments on the South Side loan, and that the Norfolk & Petersburg loan had been paid, all except $137,000, which I had not determined at that point; and therefore that notation was left on my working papers.

Q. But my question is, that your notation of no claim, too indeterminate, must have meant, if the language means what it purports to mean—it seems to amuse you?

A. Decidedly.

Q. Well, I am going to continue to do it, because I always study to please. My question is, that your notation of no claim, too indeterminate, must have meant, if the language means what it purports to mean, that you could base no claim, for the reason given on that item, and your explanation of your purpose to strike it out was that that was intended for your private guidance and not to be testified to. Now, my question is, if that was true as a matter for your private guidance, why is it not true for all purposes, for public expression, for the purpose of your testimony here?

A. For the reason that that being on my working papers at the time I was working on it, the amount of this loan which was to be turned over to the Atlantic, Mississippi & Ohio under this date, and therefore enter into the value, was not determined by me and was intended at first to be taken up here as a balance, afterwards I found that it could not be, and the notation was left in that form.

Q. Do you now mean to say that you subsequently found that it could be determined and that you were mistaken in your opinion that it was indeterminate?

A. Yes, sir; that is a notation which was made on private papers where you are not always strictly classifying your ideas but are guiding yourself, and I never intended that for any more than a personal guidance to me in making further investigations. It is quite unfortunate that the wording was put in that way. I think I have explained that several times.

Q. Does your explanation mean that you have taken this $800,000 South Side Railroad Company loan out of the Atlantic, Missis-

sippi & Ohio holdings where it was placed by the State of Virginia and have charged it as a separate item under C?

A. Yes, sir; it means that I have charged it under the statement C. I have not removed it from the $4,000,000.

Q. Then what do mean by your explanation of no claim, too indeterminate, that you have charged it elsewhere? If you charged it elsewhere you must have taken it out of the place where it had belonged, didn't you?

A. No, sir; I think not. It was to my mind necessary to mention that matter as being in here and I see no impropriety in the way that I have treated it whatever.

By the Master:

Q. In one of your answers in stating the disposition of the $800,000 loan you stated that it was surrendered. What do you mean by that? Is there any entry on these books anywhere that shows that this was surrendered?

A. No, sir.

Q. What do you mean by that, by the term surrendered?

A. I mean just the notation which we have just quoted on——

Q. You do not mean this notation about no claim, indeterminate?

A. No, sir; I mean on page 56 of the printed record, item No. 4, under bonds and notes, It is surrendered under the following terms or under the following words—

Q. Then what you mean is it was assigned under this deed?

A. Yes, sir.

Q. That makes it all clear. I could not quite understand what you meant by saying surrendered. If that is what you mean, you mean it was part of the items that were assigned?

A. Yes, sir.

Q. Then it is all right. I know what you mean now. I could not seem to make out what you meant by surrendered. Surrendered of course would be returned to the company that gave the loan. That was not this fact at all, as I understand it?

A. No, sir.

Q. Am I right about that?

A. They gave up their rights in it, whatever they may be.

Q. But that is what you mean, you simply mean that they transferred and assigned whatever claim they had when you used the term surrendered?

A. Yes, sir.

Q. Then I know what you mean.

Mr. Holt: He used surrendered instead of assigned.

The Witness: I meant by that to make a distinction between that and a sale for a specific sum.

Q. I must say that I do not think you illuminate the situation any. What in your mind by the way is the distinction between transfer and assignment and sale?

A. An assignment and transfer may be made without specified consideration of value; a sale must have a specified consideration of value in it.

By Mr. Harrison:

Q. We will take up now the next item, No. 10 on the printed schedule, Exhibit No. 3, page 13, described as Norfolk & Petersburg Railroad Company loan, $300,000. You have extended under the column Value, January 1st, 1861, $137,000 as constituting the value of that loan at that time. What does that $137,000 represent?

A. It represents the proportion or the amount of this loan which had been paid prior to its final disposal, amongst other securities, to the Atlantic, Mississippi & Ohio Railroad.

Q. Where is the rest of it, $163,000., charged?

A. It appears on page 179, Journal D, Internal Improvement Fund—

The Master: His inquiry is, where is the charge here in these proceedings, he does not mean on the original books.

The Witness: It is not charged at all.

Q. Why not?

By The Master:

Q. The question is, why not.

A. I think, your Honor, it should have been charged.

Q. Your answer to that is, then, that it was overlooked, that it ought to have been charged?

A. It was overlooked; it should have been charged.

By Mr. Harrison:

Q. How was that $137,000 paid?

A. I do not know.

Q. In money or in bonds?

A. I do not know. There is nothing in the books showing that payment; it is only an inference from the fact that when this loan was turned over to the Atlantic, Mississippi & Ohio it was turned over as the balance of the loan, $163,000. The inference is unavoidable therefore that $137,000 of it must have been paid in the interim. There is no entry that I can find showing in any way that payment.

By The Master:

Q. Then that accounts for the whole principal of the loan, and it proceeds on the assumption that there was no overdue interest?

A. Yes, sir.

Q. And about the overdue interest, if any, you have left that out of the account altogether?

A. I have left it out because there was nothing to indicate whether there was any overdue interest or not.

Q. The assumption is that the interest was unpaid and accrued, and therefore should be added to principal, is it not? If there is nothing on the books to show the payment of any interest on this amount, the assumption is that it drew interest, and therefore interest had accrued, and in order to get at the accurate amount of the loan you would take the principal and the accrued interest?

A. No, sir; your Honor, they had been paying interest on that loan right along, from the time, and I did not make any specific—

Q. Well, if the interest had been subsequently paid up to date of course that is taken care of?

A. Yes, sir.

Q. That is in accordance with your explanation the other day?

A. Yes, sir. That is shown on the next schedule, which I suppose will be arrived at in a short time.

Q. Is there anything in this original record or in these reports that you have had access to that gives any reason in detail why the aggregate of these 14 securities was lumped at the sum of $4,000,000 or why any of them were carried out at the prices fixed, or do you just simply find the entries and that is all there is to it?

A. Just find the entries, and we have filed the whole Journal entry of that as a supplementary answer to this—

Q. Not as a suppiementary answer, but as a supplementary exhibit?

A. As a supplementary exhibit.

Q. If the whole journal entry is in, that covers the scope of my inquiry?

A. Yes, sir.

Q. I remember now that you quoted from the Journal entry in one or two instances.

A. Yes, sir.

Q. But I had forgotten that the whole journal entry was put in as an exhibit?

A. It was.

By Mr. Harrison:

Q. You have referred in your Exhibit No. 3, Asset No. 10, page 34, of the printed record, notation, to a report made by John O. Steger as Senate Document No. 2, pages 19 and 20, and dated 1874 and 1875, and transmitted to the Senate as an appendix to the Governor's message. Did not that report show how this $137,000 was paid?

A. No, sir.

Q. Your own notation there, going further, shows, "The report further says that the book entries were missing and that he counted the bonds in many instances"—"There is shown to have been paid on this loan $151,524.49 and the report further says that the book entries were missing and that he counted the bonds in many instances, and that report can be relied upon as very nearly, if not absolutely, accurate." Would not your own notation indicate that it had been paid in bonds?

A. That would look so; but his reference that he counted the bonds in many instances refers to other items upon which he reported besides this $151,524.49.

Q. As a matter of fact, his report applied strictly to that loan of $300,000 this portion of it, this portion of the loan of $300,000, and upon this loan his report shows that the company paid as follows, 1867, new registered stock, $65,436.90; 1868, old registered stock, $60,500; new coupon bonds cancelled, $7,500; 1860, old registered stock, $8,000 fraction new, $87.59 new registered stock $10,000 footing up $151,524.49 as shown in your notation, with this accompanying note found in Stegar's report, the coupon bonds paid by the company, $7,500 were cancelled; the balance due on the loan was merged in the contract between the State and the Atlantic,

Mississippi & Ohio Railroad Company for $4,000,000 which is still due and unpaid. So it appears then that the $137,000 was paid in the bonds of the Company?

A. Do I understand you to say bonds of the company or bonds of Virginia?

Q. I mean to say bonds of Virginia of course.

A. I am perfectly willing to accept as a fact that the payment was made in bonds.

Q. Do you charge Virginia with any value for stock held here in the Norfolk & Petersburg Railroad Company on January 1st, 1861?

A. No, sir; I have made no charge against the Norfolk & Petersburg Railroad for stock held by the State of Virginia.

The Master: You mean you have made no charge against Virginia?

The Witness: Against Virginia for stock held by Virginia in the Norfolk & Petersburg Railroad.

Q. Did you make any charge against Virginia for stock of the Norfolk & Petersburg Railroad Company, June 20th, 1863?

A. Yes, sir, I did.

Q. To what extent?

A. $1,199,970.

Q. Why did you charge Virginia with that valuation of stock in this road June 20th, 1863, and make no charge against her on the same account January 1st, 1861?

A. That was in error. There should have been a charge made against her for the par of that stock on January 1st, 1861.

Mr. Holt: Is that one of the roads I mentioned in my statement?

The Master: No, I do not think you had that in, Judge, I do not remember that you did. That is not referred to on the schedule. The schedule is simply silent on that.

Mr. Holt: I just want to get them all, that is all.

The Master: You will not be censured for lack of diligence on that line.

Mr. Harrison: Judge, I will understand that you intended to include all such items.

Mr. Holt: Yes, that was my idea.

Q. You have got opposite your charge against Virginia of $1,199,970, as the value of this stock June 20th, 1863, this notation; turned over to A. M. & O. What did you mean by that?

A. I meant by that that this stock was turned over to the A. M. & O. Railroad Company in the transaction which we have mentioned wherein four million dollars was the consideration.

Q. Well, if the State's interest in that stock was turned over, as you have stated, to the Atlantic, Mississippi and Ohio, this is a double charge, is it not?

A. Yes, sir, it is. I have made the claim there twice; having made the claim for this stock on Defendant's Exhibit 6, 1863, page 45 of the blue prints.

Q. The next item is No. 11, Defendant's Exhibit No. 3, page 13, of the printed record—

A. Before you ask this question, Mr. Harrison, may I state that Mr. Stegar in his report, as shown in printed document No. 2, appendix to the Governor's messages for 1874 and 1875, on pages 18 and 19, does discuss other matters than this particular loan.

Q. The report is a very full and comprehensive one?

A. Yes, sir.

Q. And embraces a variety of matters?

A. Yes, sir.

By the Master:

Q. Is it to be understood from that that the items referred to in your notation relate to other matters, or that they relate to the matters suggested in the note?

A. It relates to this, that the item of $151,000 was stated as specific payment, and the amounts noted; but that the notation which I have used, that he had examined and counted the bonds in several instances and so on, refers not only to that item but to a number of others.

Mr. Harrison: That has no bearing here.

Q. That does not affect the significance of the $151,000?

A. No, sir.

Q. But that is your point?

A. Yes, sir, that he had reported on other matters.

By Mr. Harrison:

Q. Now we come to item No. 11, Defendant's Exhibit No. 3, page 13 of the printed record, reading as follows: Roanoke Navigation Company stock, the par value of which seems to be $80,000.

What value does that exhibit show that you placed upon that stock January 1st, 1861?

A. $3,832, being marked with a double star, and being the sales value.

Q. Then on the 1st of January, 1861, as shown by this exhibit, you accepted as the then value of that stock what was realized for it after the war on a sale in 1882, did you not?

A. Yes, sir, I did.

Q. Now, in 1863, on June 20th, 1863, on the blue print No. 7, what did you charge to Virginia as the value of that stock?

A. $80,000, being par.

Q. Why did you charge $3,832 on January 1st, 1861, as its value and $80,000 on June 20th, 1863, as its value?

A. That is in the same category as these previous items, where the item should have been charged at $80,000 on January 1st, 1861.

Q. And that error you wish to correct by substituting $80,000 for $3,832 on your 1861 exhibit?

A. Yes, sir.

Q. That $80,000 simply represents, as shown by the books, the cost of the stock, does it not?

A. Yes, sir.

Q. It has no other bearing or relation to its value than its cost, does it?

A. Its cost and par.

Q. Well, it is the par value, and it cost par, and that the State paid $80,000 for it, and other than that it has no relation to its value, has it?

A. None.

Q. Now, the next item is No. 12, which is on the same exhibit, page 13 of the printed record, described as Alexandria Canal Company stock, $272,000, the par value of it. What did you place on that exhibit as the value of that stock January 1st, 1861?

A. On page 13 of the printed record I have carried opposite that, under the value column, $764.47, marked with a double star, which means the sales value.

Q. And that was realized for it in what year?

A. July 1st, 1887, as shown upon page 36 of the printed record.

Q. The same stock you show on your 1863 exhibit as having a value of $272,000 June 20th, 1863, as against $764.47 as shown on

your January, 1861, exhibit. Do I understand that that was an inadvertence also?

A. That is in the same category as the previous ones, and is desired to be corrected or amended as they were.

Q. By placing on your January, 1861, schedule $272,000 instead of $764.47 as its value?

A. Yes, sir.

Q. That $272,000 simply, as shown by the books, represented the cost of the stock?

A. The cost of the stock and its par.

Q. Did it show that it had been paid for?

A. I did not go back to see whether it had been paid for or not. I only know that it was carried at par on the books of the State of Virginia. I did not go back to see whether it had been paid for in actual cash up to its par value, or whether they had received a higher par value than they had invested money.

Q. At all events it would represent in no event anything more than the cost, would it?

A. No, sir, nothing more than the cost to the State.

Q. And would have no other bearing on its value than that?

A. None.

By Mr. Holt:

Q. Was that its par, may I be permitted to ask?

A. Yes, sir, it was.

By Mr. Harrison:

Q. The next item I find is No. 13, on Defendant's Exhibit 3, page 13 of the printed record, described as Upper Appomattox Company stock, the par of which is stated to be $56,500; the value of which, on January 1st, 1861, you have placed as $16,144.26; that is correct, is it not?

A. Yes, sir, that is carried at that value and is marked with the double star, which means that it is the sales value.

Q. That then was the sum the State realized for her interest in that company at what period?

A. In 1875, first payment, 1881, second payment, 1884 final payment, as shown on page 37 of the printed record.

Q. That stock you have valued on the 20th of June, 1863, as shown by your blue print, Exhibit No. 7, at $56,500. Is that one

of the items also that was inadvertently made and that you wish to correct by placing on the January 1st, 1861, exhibit, the par of the stock as you have on the June 20th, 1863, exhibit?

A. Yes, sir, it is.

Q. That sum represents the par and the cost of the stock?

A. Yes, sir.

Q. In respect to that entry do you know whether it was paid—I mean the full subscription was paid or not? If not, you can just say so.

A. I do not know.

Q. But at all events it has no other bearing upon the value of the stock then to show that it originally cost the State $56,500?

A. That is right, and was as far as I know the par value of the stock held.

Q. The next item on the same exhibit, page 13 of the printed record, numbered 14, is described as Dismal Swamp Canal Company stock, $190,000 par. What value do you place on that stock on January 1st, 1861, as shown by that exhibit.

A. $9,935.99.

Q. And how did you arrive at that?

A. There were 760 shares, $250 each, being $190,000, and it was sold for $9,935.99.

Q. In what year?

A. In 1874.

Q. And so far as this exhibit is concerned you adopted that price realized for the stock in 1874 as its value on January 1, 1861?

A. Yes, sir.

Q. That same stock is shown on your exhibit, page 7, for 1863, as having a value of $190,000, on June 20th, 1863; that is the par of the stock, is it not?

A. Yes, sir.

Q. And is this also one of the items which you wish to amend?

A. Yes, sir.

Q. You wish then to change your 1861 schedule by striking out $35,925.99 and substituting in its place $190,000, is that right?

A. Yes, sir.

Q. That $190,000 represents as shown by the books I suppose that you examined the cost of the stock as well as its par?

A. Yes, sir.

Mr. Holt: You are making our corrections very complete indeed, and I thank you and congratulate you.

Q. And the figures have no other bearing upon the value of the stock at either period than as showing what the stock originally cost the State and its par value?

A. None.

Q. The next item shown on this exhibit, page 13 of the printed record, No. 15, I mean is numbered 15 and described as loan to Washington College, $2,000; you carried that as of a value on January 1, 1861, at $2,000, is that correct?

A. It is correct, yes, sir.

Q. Do you wish to change that?

A. No, sir, that is the correct amount.

Q. That same amount is shown on your 1863 schedule, is it not, as the value of the loan on June 20th, 1863?

A. Yes, sir.

Q. Do you wish to make any change in that?

A. No, sir.

Q. The next item shown on this exhibit, page 13, of the printed record, is numbered 16 and described as Richmond Academy bonds, $400, which is extended on January 1, 1861, under the column value at $400. Is that correct?

A. Yes, sir, it is.

Q. And the same amount is shown on your schedule for 1863, page No. 7 of the blue prints, as having a value June 20th, 1863, of $400. Is that correct?

A. It is.

Q. Were those two loans paid?

A. Yes, sir.

Q. Can you tell us when?

A. The $2,000 loaned to Washington College was paid on January 1, 1896.

Q. And the Richmond Academy?

A. The Richmond Academy was paid on February 5, 1896. The dates are shown on pages 39 and 40 of the printed record.

Q. Now, the next item on this exhibit, page 13 of the printed record, and numbered 17, is described as a claim against the United States Government, put down under the column paid at $298,369.74, and extended at the same figures under the column Value January 1, 1861. Now, will you explain that item for us and

your reasons for entering it there as a charge against Virginia, having a value on January 1, 1861, of $298,369.74.

A. Yes, sir; as shown on page 41 of the printed record, the principal of the loan made by Virginia to the United States Government, July 1, 1814, was $298,369.74. This loan was afterwards paid in full as shown by the same page of the printed record with interest in full up to the date of settlement, which was fixed between Virginia and the government as February 11, 1894, although the settlement was not made until 1903 actually.

Q. How much money did the United States Government pay to Virginia in settlement of the claim?

A. In acual money they paid over $5.50.

Q. On what date did you say?

A. It was in 1903, the settlement being made as of the date of February 11th, 1894.

Q. In other words, the result was reached as of February, 1894, and settlement made on that basis in 1903?

A. Yes, sir.

Q. By a check from the Government to Virginia of $5.50?

A. Yes, sir; and the return to Virginia of certain Virginia State bonds.

Mr. Holt: How much were the bonds?

The Witness: The principal, $581,800 of Virginia bonds; Chesapeake & Ohio guaranteed bonds, principal $13,000; interest on the $594,800, being the sum of the Virginia bonds and the Chesapeake & Ohio guaranteed bonds, from January 1, 1861, to February 11, 1894, $1,181,669.33, making a total of principal and interest of $1,776,469.33, from which is deducted the interest which Virginia had paid, 1867 to 1870, of four per cent. on the principal of the $581,800 State bonds of $69,816, which left $1,706,653.33 as the Virginia payment.

The Witness: I think I had better continue that entry to its end. There was also paid to the restored State of Virginia, no date given, $16,923.50, and cash paid to Virginia by the United States, as a balance of settlement, of $5.50, making a total payment of $1,723,582.53, which payment was in bonds of Virginia and cash.

Q. What you are now reading from is the statement of the account shown on page 41 of the printed exhibits, is it not?

A. Yes, sir.

Q. The statement of the account between the State of Virginia and the Government wherein the respective claims were balanced?

A. Yes, sir.

Mr. Harrison: If your Honor please, we expect to file with the record the report of the Second Auditor.

The Master: Relating to this same subject matter?

Mr. Harrison: Yes, sir, on September 30th, 1904, which deals with that subject.

Q. The second item to which I ask your attention, shown on Defendant's Exhibit No. 3, page 13 of the printed record, and numbered 18, is described as the claim against Selden, Withers & Company. Nothing is stated under the column par for that claim, but under the column headed value January 1st, 1861, is given the following figure, $152,023.04. What does that represent, those figures that are set down as constituting the value of that item?

A. Excuse me, you have misquoted it, it is $132,000.

Q. No, I did not.

A. That figure that you have quoted, $152,023.04 is placed there in order to reconcile the statement which I have made upon pages 42 and 43 of the printed record with the supplemental answer. The amount which I have taken into consideration as the value on June 20th, 1863, is $132,842.74.

By Mr. Holt:

Q. Is that the same as the value on January 1st, 1861?

A. Yes, sir, that is the value of January 1st, 1861.

By Mr. Harrison:

Q. Do you mean to say that you want to correct the January 1st, 1861, exhibit by stating the value at $132,842.74 instead of $152,023.04?

A. Yes, sir, I do. That claim of Selden, Withers & Company should have been $132,842.74, the same as it is in 1863. That is an error in making this summary. The amount due is $132,842.74. And since I am correcting that summary I will ask permission to include this with the other corrections.

Q. The next and last item, No. 19, on this printed Exhibit No. 3, page 13 of the record, is described as Richmond, Fredericksburg & Potomac Railroad loan. It was not a loan, was it? They were dividend bonds, were they not?

A. Yes, sir; they were dividend bonds.

Q. Then that word loan ought to be substituted for dividend bonds?

The Master: You mean that the word dividend bonds ought to be substituted for the word loan?

Mr. Harrison: Yes.

A. Yes, sir, to describe it exactly.

Q. You show the par of that was $149,984?

A. Yes, sir.

Q. And you give the same figures as constituting the value of those dividend bonds January 1st, 1861.

A. Yes, sir.

Q. How did you arrive at that?

A. For the reason that that was the face of the bonds, and they afterwards were paid in full with interest.

Q. When were they paid and in what currency? Or you can just state when they were paid.

A. $27,520 of this loan was paid on March 13th, 1863; the balance of the loan was paid on July 1st, 1863, as shown on page 44 of the printed record.

Q. Then these dividend bonds, as shown by you, were paid off during the midst of the war, were they not?

A. Yes, sir, in 1863.

Q. On your exhibit for 1863 you show the amount of those dividend bonds as paid and possessing that value, $122,464. That refers to the payment made after June 20th, 1863, does it not?

A. Yes, sir, the $27,520 having been paid prior to June 20th, 1863.

Q. And that is not included then?

A. No, sir.

Mr. Harrison: What is the next item that we come to?

The Master: Does that complete your schedule?

Mr. Harrison: Yes.

The Master: I understand it to be conceded that the schedules that have been filed as exhibits on the part of the defendant, relative to this list of items found on page 13 of the printed record of the schedules, as to January 1st, 1861, and also as to June 20th, 1863, and the supporting schedule, that as to all of those the amounts therein stated and the computations therein made are conceded to be correctly stated and correctly made, so far as the

figures are concerned. Am I right about that, Mr. Potter?

Mr. Potter: Yes, sir.

The Master: Then that may go on the record. That undoubtedly is the obvious inference from the examination, but there is no harm in having these matters from time to time cleaned right up. That takes care of the schedules up to this point, both for 1861 and for 1863; and the suggestion that has been heretofore made in relation to the accuracy of the schedules as to the amounts stated and the computations made is understood by me to apply to the schedules for 1861 and June 20th, 1863, as they are related to the items preceding this schedule that I have just referred to. So that up to date all of the schedules for 1861 and 1863 are taken care of by this admission. That is your understanding?

Mr. Holt: Yes, sir. And if Mr. Harrison is now through with this Class C, if that is the one, I want to hand to the stenographer the promised copy of the deed that was introduced the other day from the Commonwealth of Virginia to the Richmond & Alleghany Railway Company, conveying the property of the James River & Kanawha Company. I am only making a record of that because I do not want to be charged with its loss hereafter.

The Master: I think perhaps, as it is twenty minutes of six, that this may be as good a place to stop as any, and we will suspend until Monday morning at ten o'clock. And I think we have made pretty good progress.

Adjourned to September 7th, 1914, at 10 A. M.

BEFORE THE MASTER.

Richmond, Virginia, September 7, 1914.

Present the same counsel as on Saturday last.

Mr. Lilly: Before proceeding, if the Master please, I would like to ask the opposing counsel if they have any schedules or data to submit to our side, that we may be going over it and checking it.

Mr. Harrison: No, we have no schedules.

Mr. Holt: If it be not improper, may I inquire whether or not you will have any schedules, Mr. Harrison, on the subject of market quotations.

Mr. Harrison: Yes, we are going to introduce some testimony on that subject, and will probably do it in the form of a prepared statement or memorandum.

The Master: That you will submit to them as soon as you have it prepared.

Mr. Harrison: Yes, as soon as we get it ready.

Mr. Conrad: I understood Judge Holt to have said the other day, I may have misunderstood him, that you have a witness to prove those things.

Mr. Holt: We said that we had a man to examine them, not Mr. Hillman.

The Master: You said it was some one else.

Mr. Holt: Yes.

The Master: The statement was that they had an accountant making that up. But that being so, you want what they have on that line?

Mr. Holt: Yes. We may not offer anything on that line at all on account of the condition the quotations are in.

The Master: Exactly so.

Continuation of the cross-examination of

CONWAY W. HILLMAN.

The Master: I have a little examination of the witness I would like to make providing you are about to go to the next paragraph.

Mr. Harrison: Yes, I am about to take up the next paragraph. I was waiting for Major Anderson.

The Master: Then if you are through I want to make an inquiry or two, and I will do that while the General is coming in, if it is agreeable.

By The Master:

Q. Mr. Hillman, in the case of any of these railroads whose trial balances or annual statements appear in the record have made any charge for depreciation during the period covered by the statements, in what item of the trial balance would you expect to find the charge reflected or indicated?

A. In the Maintenance of Way and Structures account, sub-heading, Repairs of Buildings and Fixtures.

Q. Well, do you mean that a depreciation charge would be charged to maintenance account?

A. Yes, sir. It is now charged as maintenance account under a separate heading.

Q. Well, you mean under existing conditions?

A. Yes, sir.

Q. But as a matter of bookkeeping, if an annual charge or depreciation had been made, you would expect that to be reflected in the operating expenses or the maintenance charges?

A. Yes, sir.

W. Well, we have not any maintenance charges in any of these statements. Now take for instance, there is the Richmond, Fredericksburg & Potomac Railroad Company, page 4. I just call your attention to that. That is the printed record. All we have there on the asset side is the cost of road, new cost of superstructure, then engineering expense, and debts due the company and bills receivable, etc. and investments. Now we do not have any account there relating to maintenance

or operating expenses. What I want to get at is, if there had been any charge made during this period for depreciation, would you find it indicated in any of these items, and if so in what item?

A. In the item on page 5, expenses of transportation since the commencement of the work, March 31, 1859, etc.

Q. That is, it would be a liability?

A. Yes, sir, operating expenses. Does you Honor wish an explanation?

Q. Yes. What I want to get at is whether there is anything in these trial balances that will give us any information as to whether or not any annual charge for depreciation was made?

A. There is nothing in the trial balances which would give you that, and to the best of my recollection there is no entry on the details of the operating expenses, which are also on file in these volumes of reports, which would indicate that there had been a direct charge to depreciation. In those days it was repairs and renewals, and renewals were supposed to keep the property up to date.

By Mr. Harrison:

Q. How do you know what renewals were supposed to be fifty odd years ago?

By The Master:

Q. There is nothing in the accounts to indicate it one way or another?

A. No, sir.

Q. Why should not a charge for depreciation reduce the construction cost? Isn't that the real essence of a charge for depreciation? For instance, you have a property that has cost a million. If it has depreciated $100,000, why does not that leave the actual cost $900,000? This is simply for purposes of illustration. I am seeking now illumination with reference to getting at the value of the property. For instance, if a property cost a million and it depreciated $250,000 during a period of years, or even $50,000 how can it with any propriety be still said to be worth a million or to be carried as of a million dollars in value upon the books of the company?

A. For the reason that this depreciation cost which is charged against operating expense is supposed to be put back into the property, not as repairs, but to renew a depreciation as distinct from actual repairs. A building, in spite of whatever repairs you make, will gradually become old and depreciated where it is necessary that it be renewed, and against that the roads are allowed to charge up to their operating expenses a certain amount of depreciation; the same with their rolling stock, and especially with their rolling stock. That is anticipating the time when despite all repairs that you can make to a car or to a building, that car will become obsolete or depreciated beyond any repair, and it will be necessary to renew it or get a new one.

Q. We have not got anything here that gives us any information as to whether or not there was a renewal account?

A. No, sir, there is nothing to show a renewal account.

Q. Whether the renewal account and repair account were all charged up against operating expenses or not?

A. No, sir.

Q. And we have nothing either that indicates depreciation. The figure you gave for depreciation for rolling stock was twenty-five years, that is, based upon renewal at the end of twenty-five years?

A. For engines, locomotives, yes, sir; about twelve years for freight cars.

Q. And how about passenger cars?

A. Passenger cars run about twenty years.

Q. Those all originally of course have gone into the construction cost item?

A. Yes, sir.

Q. And if renewed and paid for by operating expenses, why they have been taken care of on that side of the account?

A. Yes, sir.

Q. Assuming that to be the fact?

A. Yes, sir.

Q. But in the absence of any knowledge of the fact, it is altogether a matter, I suppose of speculation?

A. Yes, sir.

Q. Do you keep in your bookkeeping, in order to be able to establish from your books, a presumptive value of the road? Do you keep a constant figure for its construction?

A. Yes, sir.

Q. That is, you start out with a total construction and that item never changes?

A. That is right.

Q. If that is affected one way or another it is affected by whatever may be charged into or out of operating expenses?

A. Yes, sir.

Q. And taken care of by operating expenses?

A. Yes, sir, with this other statement that you will find in the reports now that they have the cost of road and they have deducted an amount of depreciation from that cost.

Q. Under existing conditions do they have an operating construction account predicated upon the amount of depreciation from time to time?

A. Yes, sir.

Q. Why was not that true away back in 1850 and 1860?

A. For the reason that at that time we did not take into consideration depreciation at all. We had an account which we called, instead of repairs, we called it repairs and renewals, and where we were supposed from time to time to renew the rolling stock or to renew our buildings to the 100 per cent full value and take care of our depreciation by renewals.

Q. Do you mean that there was an arbitrary charge to renewals irrespective of the actual fact, in order to take charge of theoretical depreciation?

A. No, sir; it was the actual amount expended.

Q. Whether or not that took care of depreciation depended altogether upon the amount of the renewals?

A. Yes, sir.

Q. If the road was run properly and economically and kept up in first class shape, why then the renewal charge might take care of the depreciation?

A. Yes, sir.

Q. On the contrary, if the road was run with as little expense as possible and clear away down to the bone, you might

not get much of any repairs and you would not get anything for depreciation?

A. Yes, sir.

Q. Whether these factors have any influence or not in the value of the road would depend altogether upon the history of each particular road in that respect?

A. Yes, sir.

Q. And what the policy of the road was?

A. Yes, sir.

Q. If it was the policy of the road to minimize renewals and repairs and increase dividends, why, the natural tendency of that would be to decrease value, notwithstanding dividends may have been paid?

A. Yes, sir.

Q. On the other hand, if it was the policy of the road to make liberal charges for depreciation, keep the renewal account or keep renewals up so that the road was in first class condition, that might minimize the dividend paying value and still leave the property worth very much more than the property would be under other conditions?

A. Yes, sir.

Q. The result of all that is here, that with these statements before us, we have not any definite information as to what policy was pursued in connection with any road?

A. That is right.

Q. Under these circumstances, state whether or not in your judgment the book value, or what was in your judgment the book value, under those conditions, should be entitled to receive in determining actual cash market value on a particular day. What I mean now is a practical proposition, with our lack of knowledge and information of the conditions to which I have just called your attention.

A. As roads were operated at that date, I would not like to accept the book value of the stock as its actual value.

Q. Well would it be fair to say this—I don't want you to go any farther than you can properly go, but I want to get your candid judgment about it—would it be fair to say that under the conditions developed, that the element of book value

was of more or less doubtful value in determining the actual cash market value on any particular day? Is that a fair statement of it in your judgment?

A. Yes, sir; that is fair.

Q. It is impossible of course for you to state anything definite in relation to it? That is, you cannot minimize by a percentage, because you have not any basis upon which to make any calculation; that is correct is it not?

A. That is correct.

Q. And of course what you have done, and what we will all have to do of course, is to take the best evidence possible, and then reach the safest and most satisfactory conclusion?

A. Yes, sir.

The Master: That is all. You may proceed.

The Witness: I understand, your Honor, that you do not care to have me go into any particular discussion of these different roads and the amount of their operating expenses with reference to what might or might not be a proper charge, and all that.

The Master: I will tell you what I think perhaps you had better do; of course I have developed this general proposition, and my notion is that if that needs any further explanation I think you had better take it up with the counsel for West Virginia, and let them exercise their judgment as to what in addition had better be done with reference to the details. Of course the embarrassing position that we are all in I am not expressing any opinion one way or the other, but this perhaps embarrasses me more than it does you—but the embarrassing position that we are in is the paucity of the proof, and it may be that I will have more difficulty coming from each quarter so far as that is concerned. I do not know how that may be. My only purpose is so far as I can to get into the record the most definite facts upon which I will have to reach my conclusion. And in this respect I wanted to get Mr. Hillman's judgment as to the particular weight to be given to this particular factor. Now if there are any particular roads as to which there is data in existence that enables you to make any more definite statement, that may be one thing; but my suggestion

would be now—I do not wish to take it out of the hands of the counsel for West Virginia—my suggestion would be that the wiser thing for you to do would be to take the matter up with the counsel for West Virginia, and let them pursue it farther along in detail, if they see fit. I have not any personal objection to your taking it up in your own way, but I think perhaps the counsel had better be consulted.

The Witness: That, your Honor, was what I was leading to when I asked the question.

The Master: If I was sitting there as they are I would rather have the witness talk it over with me before he went into details, than to give the details on his own responsibility; and that is the reason I make the suggestion. But it is agreeable to me, if counsel are satisfied, to go on and make any explanation that you may desire.

Mr. Harrison: Explanation about what? I do not understand, if your Honor please. He has gone into the subject on direct examination and cross-examination very fully, and had effectually stated the basis of any—

The Master: I think perhaps the phase that I developed this morning has not been specifically emphasized.

Mr. Harrison: Were you suggesting that he make some further investigation?

The Master: No, he suggested that he might have some further statement to make about these roads, I inquired about this morning. My suggestion about that was that perhaps it would be better for him to confer with his counsel before he undertook to make the statement in detail. But so far as I am concerned it is quite agreeable to me to have him make the suggestions independent of that.

Mr. Holt: When the cross-examination is finished we will have some questions.

The Master: But you would prefer to go over the subject with him yourself first?

Mr. Holt: Yes.

The Master: I presumed that would be the fact. I do not know enough about the details to go into the matter. You get my point, Mr. Harrison?

Mr. Harrison: Yes.

The Master: Then if you are ready, Mr. Harrison, you may proceed.

By Mr. Harrison:

Q. I will take up Class D, which appears on Defendant's Exhibit No. 4, page 46 of the printed record, which purports to be the statement of interest on loans and dividends on stocks accrued prior to January, 1861, and collected by the State of Virginia after January, 1861. Your first statement is Orange & Alexandria Railroad Company stock, $31,604.09. Will you please state on what date that was collected by the State of Virginia or paid by the railway company?

The Master: You are examining now from page 46?

Mr. Harrison: Yes, sir.

The Master: That is the summary.

Q. That I take it is intended to be a dividend on the stock, is it not?

A. Yes, sir.

Q. When was that paid?

A. It was paid in 1854.

Q. 1854?

A. 1864, excuse me, as per page 157 of Journal D.

Q. You cannot give the month?

A. I can in a moment. I see it has been omitted from here, but I can do so in just one moment, if you desire.

Q. I would prefer to have it, but I do not want to lose any time. If you have got to send out for it, I would rather let it go as 1864.

A. Well, it was paid—I will leave the date blank and fill it in.

Q. Now the next item is Orange & Alexandria loan, $20,336.98. Was that intended to represent the payment of interest on a loan by that road?

A. Yes, sir.

Q. And when was that paid?

A. There are four items going to make that up, as shown on page 16 of the printed record.

Q. I would like to get them in the record here. Will you give the date?

The Master : Let me make one inquiry to clarify my mind a little. We have supporting exhibits here for Class C and Class D, it being convenient to put them in that shape. What I want to inquire is whether those supporting exhibits, so far as they are joint and relate to Class D, are in their chronological order. Will I find the others following right along in their regular order?

The Witness: Yes, sir. There may be slight breaks in that, due to the fact that some of the Class C items have no entry in the Class D items.

The Master: Well, you can call attention to the discrepancy when there is any.

Q. Can you give the dates of the payment of interest on that loan?

A. The first item is the interest up to September 15, 1859, wherein there had accrued $10,415.94; and on that date there was paid $9,086.61, leaving a balance of $1,329.33 of the interest due up to September 15, 1859. The second item is the interest up to September 17, 1860—

Mr. Lilly: Is not that April?

The Witness: April 17, 1860, of $14,019. On the same date there was paid $9,840.47, leaving an unpaid balance of $4,178.53. There then matured interest on this same loan from this date, from the last mentioned date, up to July 1, 1860, of $5,035.18; there was paid on July 1, $4,159.53, leaving an unpaid balance of interest of $875.65. This loan then ran on from July 1, 1860 and bore interest. We have therefore calculated the interest from July 1, 1860, to January 1, 1861, which amounted to $13,953.47. The sum of these four items which I have mentioned amounts to $20,336.98, as shown on page 46 of the printed record.

By The Master:

Q. That detail does not appear on page 16, does it, Mr. Hillman?

A. Yes, sir.

Q. Where do you get it? Oh, I see it. Where do you get your computation?

A. Six months interest at 3½ per cent.

Q. Is that statement made on the schedule? I do not find it on mine, that is any place where you have those three items aggregated.

A. No, sir, I simply took the aggregate—

Q. Give me the three items that make up your $20,336.98?

A. Four items.

Q. Yes.

A. $1,329.33, $4,178.53, $875.65 and $13,953.47.

The Master: I get it now all right.

By Mr. Harrison:

Q. They foot up $20,336.98?

A. Yes, sir.

Q. Now my question was, when were they paid?

A. The payments of interest from that date, July 1, 1860, on up to the final settlement of the loan, were made in piecemeal, as shown on pages 17 and 18 of the printed record, and finally both loan and interest paid up in full.

Q. You have not answered my question yet. I asked you when were those items paid. You have never given me any date when they were paid?

A. The first item was paid on September 15, 1859, $1,329.33—

Q. I am not talking about that. The Class refers to interest on loan and dividend that accrued prior to 1861 and were paid after 1861; and you have shown that $20,336.98 was paid after 1861?

A. Yes, sir; I see your point.

Q. Now, when?

A. It was paid at various dates afterwards. There was no specific payment of these items, but interest was calculated along on balances, and payments made on account of these balances, until, at the final end, the entire loan and its interest was retired. Payments have been made, but in piecemeal, as shown on pages 17 and 18 of the printed record.

Q. You have not given me any date yet when they were paid.

By Mr. Holt:

Q. Do pages 17 and 18 give the dates of those partial payments?

A. Yes, sir.

By Mr. Harrison:

Q. Well, won't you please give them to the stenographer?

A. Yes, sir.

Q. Answer my question. On what dates were the several items that you detailed paid, after January 1, 1861?

A. There was brought forward from page 16, $405,054.11 Up to October 20, 1862 interest charges had accumulated on that sum of $54,934.61. In this sum which I have just mentioned is included the six months interest, which is mentioned as the last item on page 16. On October 20, 1862 there was paid, on account of the above $54,934.61, $10,071.

Q. Now is that one-half of the twenty thousand and odd dollars that you take up?

A. No, sir, it is not.

Q. Is it any part of it?

A. Yes, sir, it is.

Q. What part?

A. That is an indeterminate matter. No one can tell.

Q. Do I understand then that some part of it, but how much you do not know, was paid on the 20th of October, 1862?

A. That is a matter that no one can tell exactly, what that $10,071 was paid upon. It may have been paid upon back interest, it may have been specifically designated as the interest for a certain period.

By The Master:

Q. The books would show that, wouldn't they?

A. No, sir. It just simply shows that it was a payment on account of interest.

Q. Well, I do not understand that Mr. Harrison asks you for anything except what appears from the books.

Mr. Harrison: Of course that is all I want.

The Master: He does not want anybody to speculate about what is outside of the books. We could all speculate about that.

Q. He wants you to tell him where you find on these books the entries in which you claim these amounts that aggregate twenty odd thousand dollars were paid.

The Master: That is in substance what you want, is it not, Mr. Harrison?

Mr. Harrison: Yes, sir.

Q. Now go right to the books and tell him what you know about that?

Mr. Holt: May I ask, Mr. Master, if pages 17 and 18 are not copies of the books themselves.

The Master: I so understand it. I am not testifying.

By Mr. Holt:

Q. What is the fact Mr. Hillman?

A. That they are copies of the books of the company.

The Master: I suppose what Mr. Harrison would like to have Mr. Hillman state, as an accountant, is just exactly which one of these credits of the payments of interest Mr. Hillman in getting up his account has allocated to these four items aggregating $20,000. Is not that in substance what you want?

Mr. Harrison: Well what I want to know is the date of the payments of the four items, that he said footed up $20,336.98, represented to have been paid after January 1, 1861.

The Master: Precisely, and it is up to Mr. Hillman now to take his books, or the copies of the books, and do the best he can to answer the question.

Mr. Holt: It is a question of allocation entirely.

The Master: It is up to Mr. Hillman, and they have a right to find out about that.

Mr. Harrison: This witness ought certainly to be able to say whether he can give me the information.

The Witness: No, sir, I cannot give that information.

By Mr. Harrison:

Q. Then if you cannot give the dates of the payments, how can you say that it was paid after January 1, 1861?

A. For the reason that the entire loan, with its accumulated interest, was finally paid in full. Therefore all items of interest, which had accumulated up to January 1, 1861, must have been paid.

Q. When was that final settlement made to which you have referred, of the entire loan and the accumulated interest?

A. It was made in October, 1862.

Q. Now do I understand you to say that all you can say so far as indicating the date upon which that charge of twenty thousand and odd dollars of interest was paid, is that it was between January 1, 1861, and October, 1862?

A. Yes, sir; it was paid during that period.

Q. You show on page 17 of the printed exhibits that there was a payment made of $10,071 on the 20th of October, 1862, do you not?

A. Yes, sir.

Q. And you also show that there was a payment made of twenty thousand and odd dollars on the 25th of October, 1862, both items being described by you as interest. Now what is the rule as to the application of payments for interest?

The Master: In the absence of any agreement between the parties, is that what you mean?

Mr. Harrison: That is what I mean.

A. I should consider that it applied to the back interest which had accrued up to that date.

Q. Well, these items that make up this twenty thousand and odd dollars are back interest, are they not?

A. Yes, sir.

Q. Then according to that rule, would not the first payments be applied to the discharge of those items?

A. I should say they would, yes.

Q. And according to that rule those two payments made in October, 1862, would discharge the twenty thousand and odd dollars that you have shown on your exhibit at page 46, would they not?

A. Yes, sir.

Q. So that according to your last answer that interest was paid on October 20th and October 25, 1862, was it not?

A. On the assumption that I have made that these payments would be paid to back interest, yes, sir.

Q. Now, going to the first item just for a moment, a question I omitted to ask you, that is the dividend on the stock of the Orange & Alexandria Railroad Company, put down at $31,604.09, which you have stated was paid in 1864, when did that dividend accrue?

A. It is marked as accruing—as declared in 1854, paid in 1864.

Q. Now, come to the second item, Richmond & Danville Railroad stock. You show no dividend opposite that. Is that correct?

A. Yes, sir.

Q. On the Richmond & Danville Railroad Company loan you show a payment of interest amounting to $10,500 after January 1, 1861. When was that paid?

A. Page No. 21 of the printed record, it was paid on a date subsequent to January 1, 1861. I have not entered the date here, but it was included in a payment of $21,000, which is a semi-annual payment of the interest on this loan. If the date is material I will furnish it.

Q. I would like to know the date. Haven't you got it on page 21?

The Master: He said part as semi-annual payment of interest, as I understand.

Q. Did you say it was included in the semi-annual interest that was due when? I don't know that I understood your last answer.

The Master: He did not state when it was due. He said part was in the semi-annual payment.

Q. I want to know when that was paid?

A. This was paid February 21, 1861.

By The Master:

Q. That appears on your printed schedule?

A. Yes, sir.

By Mr. Harrison:

Q. Does that entry on your schedule at page 21 of the printed record, "This was paid February 21, 1861," refer to the payment of the semi-annual installment of interest?

A. Yes, sir.

Q. It is not opposite then the correct figures, is it?

A. No, sir, it is not.

The Master: That does not seem to have anything in the figure column in relation to it.

Mr. Harrison: In other words, what I wanted to show was that the date he has given as the date of the payment is not indicated by the exhibit.

The Master: No, but evidently that was intended as a notation to follow that item.

Q. The next item is Richmond & Petersburg Railroad Company stock, a dividend of $9,640, entered as paid after January 1, 1861.

The Master: I suppose this printing has gone so far that we cannot make any changes now, but I just call your attention, here is an element of confusion in this schedule, and if it is not too late we will have it fixed. On page 21, it states that this was paid February 21, 1861 and in parentheses July to January, six months, and then follows a little line carrying out to $576,303.34, which has not the slightest earthly connection with this notation. That ditto line should be stricken out if you can get it out. It has confused you, and I have been studying over that for five or ten minutes and finally got it cipered out. But we have got to get that ditto line out because it has not the slightest earthly connection with the item. I mention this now because every little while I run across something of that sort. I do not know how it happened to get in there. I suppose the printer stuck it in.

The Witness: Your Honor, we cannot blame the printer for that. It is in the original writing with the intention of applying to the line above, but it happened that on this account it comes in opposite that other line.

The Master: It is impossible that more or less of that sort of a thing cannot happen as we go along, but we will straighten it out as far as we can. Personally, I think I will remember most of this as I go along, so it will not bother me when I get to it, but a little thing like that is sometimes a source of infinite annoyance.

By Mr. Harrison:

Q. (Question repeated as follows.) The next item is Richmond & Petersburg Railroad Company stock, a dividend of $9,640, entered as paid after January 1, 1861. When was that paid?

A. Page 23, of the printed record shows that it was paid on February 28, 1861, page 82, Journal D, Internal Improvement Fund.

Q. No. 4, on page 46 of the printed record, described as Virginia Central Railroad Company stock, and nothing opposite that. Does that mean that no dividend was paid on that stock after January, 1861?

A. None that had accrued prior to that date, yes, sir.

Q. That is what I mean, prior to January, 1861.

A. Yes, sir.

Q. Virginia Central Railroad Company, interest on loan, is entered as paid $1,159.34, after January 1, 1861. When was that paid?

A. January 2, 1861, Cash Book No. 10, Board of Public Works, Second Auditor's office, as shown on page 26 of the printed record.

Q. Virginia Central Railroad Company, dividend bonds; there is entered as payment of interest on these bonds $5,959,-80 accrued prior to January, 1861, and paid after that date. Can you give the date of payment?

A. On January 19, 1861.

Q. The next item is No. 5, Winchester & Potomac Railroad Company. There is an amount of $833.33 as paid after January, 1861. Does that mean stock or loan, is that interest or dividend?

A. That is an annuity.

Q. Can you give the date of that payment? You mean it is on account of an annuity?

A. Yes, sir.

The Master: That is that $83,000 item?

Mr. Harrison: Yes, sir.

Q. Give me the date of payment.

A. It was paid July 27, 1861, anticipating the date of its maturity.

Q. The next item is No. 6, Richmond, Fredericksburg & Potomac Railroad Company, dividend certificate, opposite which is an entry of an amount of $4,467.41 as paid after January 1, 1861. That means interest on those dividend certicates?

A. Yes, sir.

Q. Can you give the date of that payment?

A. January 16, 1861, as shown on page 44 of the printed record.

Q. The next item is No. 7, Virginia & Tennessee Railroad Company loan, opposite which there is entered $280,000 as a payment on account of interest after January, 1861. On what date or dates was that amount paid?

A. That was paid at various dates as shown on page 30 of the printed record:

May 21, 1861,.....	$ 6,000.00
May 23, 1861,.....	10,000.00
June 3, 1861,.....	10,000.00
June 26, 1861,.....	7,952.00
July 9, 1861,.....	1,653.57
January 11, 1862,.....	14,394.43
February 7, 1863,.....	90,000.00
March 5, 1863,.....	50,000.00
May 14, 1863,.....	55,000.00
August 15, 1863,.....	35,000.00

Q. The next item, No. 8, South Side Railroad Company loan opposite which is entered $264,500 as a payment of interest on that loan after January, 1861. Can you give the date

or dates of different payments?

Page 32 of the printed record:

November 10, 1862,.....	$ 12,500.00
October 2, 1862,.....	56,000.00
July 29, 1863,.....	56,000.00
August 1, 1863,.....	63,000.00
August 8, 1863,.....	28,000.00
August 27, 1863,.....	21,000.00
September 16, 1863,.....	28,000.00

Q. The next item, No. 9, Norfolk & Petersburg Railroad Company stock opposite which is entered $9,900 as a dividend paid on that stock after January, 1861. On what date was it paid?

A. It was paid on January 22, 1862, as shown on page 117, Journal D, Internal Improvement Fund, page 33 of the printed record.

Q. The next item immediately under is Norfolk & Petersburg Railroad Company loan, showing payment of interest of $36,000 on that loan after January, 1861. Can you give me that date now?

A. Yes, sir.

Q. What is that?

A. That is shown on page 33 and was paid January 11, 1864, four and a half years interest which had accumulated up to July 1, 1863, $94,500; and the $36,000 is the proportion of that from January 1, 1859, to January 1, 1861.

Q. The date, I believe you gave of payment was January 11, 1864?

A. Yes, sir.

Q. The next item, No. 10, is James River & Kanawha Company, opposite which is entered $250. What does that mean?

A. That means that there was paid a dividend on the James River & Kanawha Company of $250.

Q. Dividend on its stock?

A. On the stock owned by the State of Virginia.

Mr. Lilly: Was not that on a $100,000 loan? It is not in

these exhibits; it was introduced since they were printed.

The Witness: I find that that is a partial payment of interest on a loan of $100,000 to the above company, made by the State of Virginia.

The Master: Made to the State of Virginia?

The Witness: No, sir, made by the State of Virginia.

The Master: Oh, loan made by the State of Virginia.

The Witness: Yes, which was due January 1, 1861, and was paid January 4, 1861, as shown on the treasurer's blotter which is not paged. This exhibit has been filed by us later than the printed record, but in 1861.

Q. Did you examine the cash book No. 9 of the Board of Public Works with reference to this payment which you have now described as a payment of some interest on a loan? If you did, did you find it described as you have stated? I will proceed with the examination as you are not ready to answer that question. Take item No. 11, loan to Washington College. What does the $60 entered there represent?

A. The interest accruing on loan made to Washington College.

Q. Accruing before January, 1861?

A. Yes, sir.

Q. And paid when, if you can state?

A. And paid March 29, 1861, as shown on page 39 of the printed record.

Q. The next item, No. 12, Richmond Academy bonds, shows a payment of $12. Does that mean interest on this bond paid after January, 1861?

A. Yes, sir.

Q. And which had accrued prior to that date?

A. Yes, sir.

Q. The date of payment?

A. As shown on page 40 of the printed record, July 9, 1861.

Q. The next is item No. 13, entered as claim against United States Government, $832,451.57. What is that?

A. That is the amount of interest at 6 per cent, from July 1, 1814, to January 1, 1861, which had accrued upon the loan to

the United States by the State of Virginia, the principle of which was $298,369.74.

Q. Is that the same transaction that you testified about under Class C, showing the payment by the Government of the United States to the State of Virginia of $5.50 in February, 1903?

A Yes, sir.

Q. On a balancing of accounts between them?

A. Yes, sir, shown on page 13, item No. 17 of the printed record.

By The Master:

Q. Does the transcript that you have from the treasurer's office show that the loan bore interest at the rate of 6 per cent?

A. The settlement of that account is in the Second Auditor's office.

Q. Wherever it comes from.

A. And it was calculated at the rate of 6 per cent. per annum on both sides of the account.

Q. The settlement shows that?

A. Yes, sir.

Q. The answer is that the rate of 6 per cent. interest was computed on both sides of the loan?

A. Yes, sir.

Q. That is, the note or account or claim of Virginia against the United States on one side bore 6 per cent. interest, and the bonds of Virginia which were surrendered to the United States as part of the settlement were also at 6 per cent. interest?

A. Yes, sir.

Q. So they have the same rate on each side?

A. Yes, sir.

Mr. Harrison: It would be unprofitable to be asking the witness for any opinion about that item. The whole matter is shown by the records of Virginia, and of the United States as General Anderson suggests, and I intend to put in, as I stated on Saturday, a copy of the Second Auditor's report.

The Master: I do not suppose anything that Mr. Hillman can say will affect the rights of the parties one way or the

other with reference to that. It is probably a matter of legal construction; but I was simply getting right here just the facts so I will have them in my mind.

Mr. Holt: These documents are very plain.

The Master: If there is any peculiar legal construction to be given, that will be for me on argument rather than for Mr. Hillman to express an opinion about as an accountant. It is a matter of construction, that is your idea, isn't it?

Mr. Harrison: Yes, sir.

By Mr. Harrison:

Q. The next item is No. 14, the Farmer's Bank of Virginia, opposite which there is an entry of $33,691.00. Does that represent dividend paid on the stock of that bank after January 1, 1861, which had accrued prior to that date?

A. Yes, sir.

Q. The next items, 15, 16, 17, 18, and 19, represent several payments of interest, I presume on the dividends of those banks, do they not, similiar to that of the Farmers' Bank, similarly situated?

A. Yes, sir, they do.

Q. Having accrued prior to and paid after January, 1861?

A. Yes, sir.

Q. I want to know the date of the payments of those entries representing dividends on the stock of those banks respectively. If they were all paid at the same time or approximately the same time you might give one date; if not, I would like to have the separate dates.

The Master: That is the dates of the payments you mean. You said interest, but what you mean is amounts?

Mr. Harrison: Yes, sir, dates of the payments of the several amounts of dividends on the stock respectively indicated as owned by the State in those banks.

Q. Is it shown on page 47 of the printed exhibits?

A. Yes, sir, it is shown on page 47 in detail.

Q. Does that show they were all paid in the year 1861?

A. Yes, sir.

Q. And all of them paid on some date in January, 1861 and three in February 1861?

A. Yes, sir.

Q. That is sufficient. No. 20 is Blue Ridge Railroad Company, tolls for use of, showing $1,534.69. When were those tolls paid?

A. January 26, 1861, as shown by page 27 of the printed record.

Mr. Harrison: We are through with that schedule.

The Master: As to that schedule, I understand it is conceded that all of the principal exhibits and the supporting exhibits and the summary of the amounts are correctly stated and the computations accurately made; that is so, is it not?

Mr. Harrison: As far as the mathematical part of it is concerned, the additions and multiplications, I presume that is correct.

The Master: I am stating that so as to eliminate any question hereafter.

Mr. Holt. Of course the Master is not trying to indicate the value.

The Master: Not at all, simply this, so that when I come to look this over, whatever argument may be predicated on this, I will have no disturbance as to the figures; I may be satisfied that the figures are all right.

Mr. Holt: And before Mr. Harrison goes on I want to congratulate him for the expedition with which he has gone through Class D. He has done it rapidly and beautifully, you will permit me to say.

The Master: And if the Judge has no objection, I desire to concur without the slightest reservation in the statement made by the Judge, and in a very adequate manner taking care of the interests of Virginia also.

Q. Now, we come to Class E. Class E is described in the supplemental answer as bank stock purchased by Virginia with joint funds prior to January 1, 1861, and in her possession on that date. The first one of these banks in the list is the Farmers' Bank of Virginia. What is the amount of stock you

show owned by the State in that bank January 1, 1861?

A. 9,626 shares, par $100, $962,600.

Q. What do you value that stock at as of January 1, 1861, per share?

The Master: In order that there may not be any confusion—this does not interfere with your cross-examination—I do not understand that Mr. Hillman predicates any idea of value upon the banks other than the same method that he has used in connection with the railroad companies, but of course this question literally speaking is based upon the actual value, but I suppose what you mean is his method of computation.

Mr. Harrison: I am going to pursue that through.

Mr. Holt: That is a book value of course, your Honor.

The Master: Yes.

Mr. Holt: There is some difference between the values of a bank and a railroad.

The Master: Yes.

Q. The question was what do you show to be the value per share of that stock January 1, 1861?

A. $111.57.

Q. How do you describe that value?

A. Net value.

Q. What do you mean by net value, does that have the same significance as book value?

A. Yes, sir, the net being taking the book value and deducting the amount of the dividend from that book value, and I have therefore denominated it net.

Q. It means the same as book value in this connection?

A. Yes, sir, book value less the dividend.

Q. You relied for your exhibit on the printed report of the officers of the bank to the Board of Public Works, did you not?

A. Yes, sir.

Q. And you had no other source of information than that upon which you have predicated your exhibit or based your testimony, did you?

A. None.

Q. Is your exhibit an exact copy of the report of the officers

upon which you relied, or have you changed in any way the designations of the items found in the report?

A. My recollection is that that is a copy and I have not changed the titles.

Q. I call your attention to the fact that on your exhibit, page 48 of the printed record, Farmers' Bank of Virginia, you have an item of $337,067.05, which you have described as profit and loss. Now look at the report itself and see how that is described.

A. It is described as surplus and contingent fund.

Q. Why did you change the description of that item to profit and loss, did you have any reason for that or object in it?

A. No, sir, none.

Q. Profit and loss is a different thing from Surplus and Contingent Fund, isn't it?

A. No, I think not.

Mr. Holt: Do you mean generally or in this particular instance.

The Witness: In this particular instance.

Q. Now, look at the next page of the original report and see how it is there described, that same entry. That is page 16 of the report.

A. It is there described as contingent fund.

Q. You don't mean to say the contingent fund is the same thing as profit, do you?

A. Yes, sir, in this case it would be.

Q. For the purpose of figuring the net value?

A. Yes, sir.

Q. What does contingent mean? It must mean that its value is contingent upon something, does it not?

A. Yes, sir.

Q. Well, if its value is contingent you can call it profit?

A. The assets of the bank are stated—

Q. That is not an answer to my question. I do not care having you go into an account of the assets of the bank, but I would like to have an answer to my question.

The Witness: All right. Your Honor, the question cannot

be answered unless I do go into it. I submit that to your Honor.

The Master: I cannot tell in advance how he should answer the question. You are an accountant, Mr. Hillman, and you go ahead and answer that question as directly and concisely as you can. You are answering the question that Mr. Harrison is asking you, and it is up to you to say what the answer is, and I expect you to make it as responsive as is compatible with the circumstances.

Mr. Holt: May we have the question repeated now?

The Master: Yes.

(Testimony read by stenographer.)

The Master: Go ahead and make the best answer you can and make it in your own way, and cover the ground from your point of view as fully as you can.

Mr. Harrison: I do not want the best answer, I want a true answer to the question, fully.

The Master: If it is an untrue answer it would be a bad answer and not the best answer.

The Witness: A contingent fund is intended to cover a possible depreciation in assets, or some contingency that might arise of that character. It has therefore been specifically laid aside and distinct from all other liabilities of the bank. Until that contingency arises, and until the fund is expended it is a profit of the bank, or an asset which can be considered as a profit.

Q. Then the bank's statement itself described that fund as a contingent fund, whereas you have described it as profit and loss, as a profit?

A. Yes, sir.

Q. You have taken it as a profit, although the bank called it contingent?

A. Yes, sir.

Q. Now why didn't you put on your schedule the description that the officers of the bank used in their report, instead

of substituting for it a different description? Your schedule, in other words, is not accurate.

A. For a special reason, that I considered it a profit and loss account, it being entered as surplus and contingent funds, on page 15 of Document 14, the bank statement.

Q. But if you were undertaking to transcribe here an accurate statement from the report of the officers, why didn't you give the report as you found it instead of giving your construction of it as being an accurate statement of the report itself?

A. There is no reason why I did so, excepting that I have stated that I considered it a profit and loss account, and so entered it.

Q. Does the statement show any bad debts or doubtful debts?

A. No, sir.

Q. Look on page 16, the tabular statement of the condition of the bank, which is part of the report of the officers, and tell me whether or not it shows any bad or doubtful debts included in the assets?

A. Yes, sir, it does on page 16.

Q. What are the bad debts there shown?

A. $70,773.96.

Q. What are the doubtful debts shown?

A. $45,437.24.

Q. Did you base your book value on $116,210, in part, of bad doubtful debts?

A. Yes, sir, it looks as if I had not taken that into account in my statement. I have taken the trial balance only, as shown on pages 14 and 15.

The Master: What do those bad debts aggregate?

Mr. Harrison: $116,210 bad and doubtful debts.

Q. Then your book value is based on a surplus which contains $116,210 of bad and doubtful debts, and an unknown contingent fund, is it not?

A. No, sir.

Q. Well, why?

A. For the reason that it is—

Q. Did you take account—

Mr. Holt: Let him answer.

The Witness: Let me answer the question, will you?

Q. Go ahead.

A. For the reason that it is shown on page 16 that there are bad debts and doubtful debts to the amount of the $116,211.30 mentioned, but that the contingent fund is not mentioned as a doubtful item at all, it is mentioned as a distinct item.

Q. Now for the year 1861, as shown by that statement, how much did the bank apparently earn as profit, assuming that there was nothing else to deduct except the bad and doubtful debts?

A. I do not know how much they earned that year.

Q. Well, what does your exhibit on page 48 show to have beeen the profits for the year 1861, of the Farmers' Bank of Virginia?

A. The total profits up to January 1, 1861, $475,168.23.

Q. If you will look at the comparative statement of the officers of the bank on page 15, do you not find there the profits stated for the year 1860 and the year 1861?

A. Yes, sir, on that page 15 there are two years mentioned 1860 and 1861.

Q. Now what are the profits shown for the year 1860 on that statement, the report of the officers which you hold in your hand?

The Master: Is it shown there?

Mr. Harrison: Of course it is.

The Master: Why don't you state it then?

The Witness: It shows the total profits, yes, sir. For 1861 it shows the surplus and contigent fund and the profits of the institution $475,168.87.

Mr. Harrison: I did not ask that question.

By The Master:

Q. Does that report that you have got there show that the officers state what the profit was?

Mr. Harrison: That is what it shows, "Profits of the institution for the year 1861."

The Master: What objection is there to reading that and putting it into the record? I want to tell you from now on I do not want you to sit five minutes and look at an entry like that to determine what you are going to say about that. Now that entry shows right on its face what the profits were. I hope that is clear. There is no progress made by that. I have got to see these reports; and it is stated right there what it is and you have no right to wait five minutes deciding whether you are going to answer that question. Now read it.

The Witness: The profits of the institution show $138,101.18.

By Mr. Harrison:

Q. And does it not show the same item on your report?

A. Yes, sir.

Q. As to profit for 1861?

A. I do not know whether it is profit for the year or not. It is headed profits of the institution.

Q. It is headed profit for the year 1861, under the report of the officers, is it not?

A. Yes, sir. Whether it is cumulative for the year or not I do not know; the report does not say.

Q. Does not the same comparative statement, page 15, show what the profits were of the institution for the year 1860?

A. Yes, sir.

Q. What is it?

A. $145,813.47, subject to the same comments I made on the other.

Q. Then the profits for the year 1861 could not be cumulative, could they, when they are shown to be less than they were for the year 1860?

A. Not unless they had paid a dividend in excess, and so reduced the value. I do not know.

Q. Now what dividend was paid by this bank?

The Master: Before you leave that, please, I have a question.

By The Master:

Q. I notice, and that is where I am getting into a little confusion, on page 48, Mr. Hillman, you have an item profits of institutions, $138,101.18. Now should that read "Profits of institution"? I was just going to inquire what these "institutions" were. I suppose that is the bank itself. What is the fact about that? Because, as that reads in the exhibit, it would lead me to think they had some stock in some other institutions.

Mr. Harrison: The report of the officers reads "Profits of the institution."

The Master: That is what I thought "Profits of the institution." Then that, I suppose, is the entry we ought to have on the exhibit. We will strike off the "s" on "institutions," so that relieves me of any confusion about that.

By Mr. Harrison:

Q. Now I want to know what dividend this bank declared and paid for the year 1861?

A. 7¼ per cent.

Q. What would be 7¼ per cent upon the total capital stock of the bank, the total capital stock of the bank being $3,150,900.

A. $228,440.25.

Q. Then if the dividend declared amounted to $228,000 and the profit of the institution was $138,101 for that year, they did not earn their dividend, did they?

A. If that is true—I mean if those figures are true—they did not earn their dividend.

Q. By how much? What was the deficit?

A. $90,339.07, if those figures are correct.

Q. I am taking the figures from the report of the officers.

A. Yes, sir, and it is for that very reason that I do not accept the fact, if it is a fact, that those profits of the institution do show the profits for the year 1861.

By The Master:

Q. That is because they have declared a dividend larger than that amount?

A. Yes, sir, and there does not show between the two years a corresponding reduction of surplus and contingent fund and final profits, and therefore there must have been some other item than the par after all profits entered in there and it must have been cumulative, either in the way of additions or of deductions on account of other payments or dividends.

Q. In other words it does not look like either good bookkeeping or good business, is that it? It is either not good bookkeeping or it is not good business?

A. Yes, sir. It shows that that item is not the profits of the year, that is all.

By Mr. Harrison:

Q. These statements, you have several times said, were made under oath; that is true, is it not?

A. Yes, sir.

Q. I am taking the statements as I find them, and I am not indulging in suppositions or conjectures about them, and my questions are based upon the figures in the report upon which you have undertaken to base your conclusion.

Mr. Lilly: Do not argue with the witness.

Q. Now was there a falling off in the profits of the institution, under the comparative statement of profits for the years 1860 and 1861, and if so to what extent?

A. The item which you have mentioned, profits of the institution, showed a falling off of $7,712.29.

Q. Is there any falling off in the deposits for the year 1861 as compared with 1860, as shown by the report of the officers?

The Master: While he is making that computation I wish you would get word to Mr. Harris to have this print changed, while there is time to do it, so that instead of "Profits of institutions" it will read as it ought to read, "Profits of the institution." We will have all these things checked up as we go along, and then we won't have any confusion.

Mr. Holt: I should certainly think that could be done, especially in those volumes that embody the exhibits alone.

A. The deposits declined from 1860 to 1861, $296,404.77.

Q. Now will you please tell me whether there was any falling off in the circulation of the bank between 1860 and 1861, as shown by the comparative statement referred to?

A. Yes, sir; there was a falling off in bank circulation.

Q. To what extent?

A. $237,294.

Q. Well, now, was there any falling off in specie which the bank owned between 1860 and 1861, as shown by the same comparative statement?

A. Yes, sir; the specie on hand was less in 1861 than it was in 1860.

By The Master:

Q. By how much?

A. $132,692.50.

By Mr. Harrison:

Q. Was there any increase in the debts of the bank between 1860 and 1861, as shown by the same statement?

A. No, sir; there was a decrease in the debts of the bank.

Q. Debts due to other banks, of debts due by the bank to other banks, was there any increase between the two years in that item?

A. Yes, sir, in the debts due by this bank to others, there was an increase.

Q. Of how much? In the year 1861, of course I refer to. Now what was the amount?

A. $110,527.39.

Q. Now then, taking the report, which contains the only information you have had in respect to the condition of this bank in January, 1861, and upon which your figures are based of $111.57 as its book value on that date, in view of the facts that we have just brought out, namely, that the bank did not earn its dividend for the year 1860 by ninety thousand and some hundred dollars, that the profits had declined between 1860 and 1861, by $7,700, that the deposits had fallen off—I have forgotten the number of dollars, but it was several hundred thousand—that the circulation had decreased two or three

hundred thousand, that the specie had decreased by $132,000, and its debts to other banks had increased by over a hundred thousand dollars, what would you say as to the condition of the bank in January, 1861? Would you call it good or would you call it bad, or would you call it indifferent? Now remember that your answer is based on the evidence that we are all relying on.

A. In the first place, leaving out—I beg your pardon, I would say that if I am restricted only to the items which you have mentioned, the bank was in worse condition in 1861 than it was on January 1, 1860. And if I accept as a fact that the profits of the institution were only the amount that you say, they did not earn their dividend.

Q. Instead of being worth eleven dollars and some odd cents premium, would it, confining your answer to the facts that have been laid before you, in your judgment be worth par?

A. If I am restricted to the facts which you have mentioned, and not allowed to take anything else into consideration, it would not be worth par. But I consider that but a partial statement of it.

By The Master:

Q. In other words you do not concede the assumption to be predicated upon the facts, the assumption in the question?

A. Not on the full facts in the case, that is all.

Q. But assuming all the facts stated by him in his question to be true, you make that answer?

A. And that there are no other facts in the case.

The Master: That can be determined later on. If we have got to take the examination by piece-meal we cannot answer it in a minute.

Mr. Harrison: We cannot go outside of the facts represented by the figures in the document on which the witness relies.

Mr. Holt: I think he has answered your question.

The Master: He concedes, on the facts stated by you, that the stock would not be worth par.

Mr. Harrison: I have not stated anything as a fact that is not contained in the report of the officers, upon which he has based his statement.

The Master: Well, may be that is the subject of argument.

The Witness: Mr. Master—

The Master: All that you are required to do Mr. Hillman is to answer the questions put by Mr. Harrison. If there is any impropriety about the question, that matter will be raised by Judge Holt.

The Witness: I understand that I am restricted to the facts stated in his question.

The Master: You have answered the question exactly right from his point of view and from your point of view. My suggestion is that if he happens to put a question that is not a proper question, the objection to that question will have to come from Judge Holt or Attorney General Lilly, and until it does come the question goes, and you are compelled to answer. You have done it all right and answered all right with all necessary qualifications. I think I understand it right?

Mr. Holt: I think so. I would like to inquire— I may have misunderstood a moment ago, I may have misunderstood the question, that the liabilities of the bank had increased or decreased, which was that?

The Master: The liabilities had increased.

Mr. Harrison: Had increased a hundred thousand.

The Master: There is not any question about that fact.

The Witness: I beg pardon, they show that the liabilities as regards circulation—

The Master: Does the Judge refer to the total liabilities?

Mr. Holt: Yes.

The Master: I had in mind debts of the bank.

Mr. Holt: What answer did he give a while ago? Let the stenographer read it.

(Testimony read by stenographer.)

By Mr. Harrison:

Q. Now what do you show on your exhibit, and on what page will it be found, the value of this Farmers' Bank stock June 20, 1863?

A. Page 38 of the blue prints.

The Master: Before you proceed, I want to make just one additional inquiry in relation to this dividend and the profits of the institution. Assuming that the profits of the institution are correctly stated by the officers in their sworn report, it would indicate that they had declared something like ninety thousand dollars out of their capital as a dividend, wouldn't it?

Mr. Lilly: It would be out of surplus, wouldn't it?

The Master: If they had any surplus.

Mr. Lilly: The record shows that they had $337,000 surplus.

By The Master:

Q. It would be $90,000 out of their surplus?

A. Yes, sir, out of their surplus.

Q. Which had already been reduced to somewhere over a hundred thousand dollars by bad debts?

Mr. Harrison: Yes, and they called it, not surplus, but contingent fund.

The Master: I am glad you called my attention to that, I wanted to get that into the record.

Q. There was surplus enough on hand to have justified the declaring of a dividend in excess of the current profits, that is the fact, I suppose?

A. Yes, sir, and the surplus fund increased in 1861 over 1860.

By Mr. Harrison:

Q. How much?

A. $6,026.96.

Q. What value do you give this stock of the Farmers' Bank on June 20, 1863, as shown by your exhibit at page 38 of the blue prints.

A. Taken at the same value as January 1, 1861.

Q. Namely, a value of $111.57 per share?

A. Yes, sir.

Q. And you have based that on the same report that you used for 1861?

A. Yes, sir.

Q. In other words it is simply a duplication of your 1861 report, is it not?

A. Yes, sir, with the notation which I have made below on page 38.

Q. Using the date of June 20, 1863, instead of January 1, 1861?

A. Yes, sir.

Q. Will you tell us, if you please, what became of this bank?

The Master : Before you reach that—this schedule contains the same error that the other contained, "Profits of institutions." Now be sure on the original that goes into the case that the "s" is stricken off and that the "The" is inserted.

Mr. Lilly: If the Master please, we do not want to be captious, but we object to that question and state the reason now that it is not material.

(Question repeated by stenographer.)

The Master: I shall admit that. I cannot tell what weight it may have.

Mr. Lilly: I just want to call the Master's attention to the fact that we made the objection, but do not insist on it at this time.

A. I do not know.

Q. Is it in existence today?

A. I do not know.

Q. Have you really any doubt on that subject?

A. I have no doubt on the subject, but I have no evidence on the subject save hearsay.

Q. Except hearsay?

A. That is all.

Q. Well, according to hearsay what became of the bank?

Mr. Holt: I object to that, your Honor. If they want to prove that the bank went out of existence they can do it.

The Master: If they insist on that I cannot admit it.

Mr. Harrison: There are some things that we all take

knowledge of, historical facts, and I presume it is as well known to this witness as it is to you.

The Master: Well I do not know anything about it.

Q. If you do not know anything about that subsequent history of the bank, if you want to give that answer you can do it.

The Master: He has no knowledge except hearsay, he has no legal knowledge.

Q. Do you know of any such bank in existence today?

A. No, sir, I do not.

Q. Do you know that it was in existence after June 20, 1863?

A. Yes, sir, I do.

Q. How do you know that?

A. For the reason that I have traced some payment of dividends on this bank stock into the record subsequent to June 20, 1863, in order to make up these statements.

Q. Then how long did the bank continue to exist, according to the trace that you made of its history and its existence?

A. I know that it was in existence in January, 1865; I do not know any further than that.

Q. Now do you not know anything at all about its value, the value of the stock, June 20, 1863, as appears from your testimony here; that is true, is it not?

A. I know nothing whatever of its book value.

Q. On June 20, 1863?

A. On June 20, 1863.

Q. All you have done with reference to testifying in respect to its value on that date is to file figures taken from the report of the officers of the bank for January 1861, as you did in that case?

A. Yes, sir, as shown on page 38 of the blue prints.

By Mr. Holt:

Q. Right there pardon me a moment. What is the difference between the schedule for 1861 and for 1863?

A. The simple notation that we were unable to find any further statements of the bank, and simply that the continued

payments of dividend at the same rate would tend to indicate that the stock was of at least equal value.

Q. That last fact does not appear on the 1861 schedule, and that is the difference between the two schedules, is it not?

A. Yes, sir.

By Mr. Harrison:

Q. The real difference is a date, as you have already called attention to. One is January 1, 1861, and the other is June 20, 1863.

A. Yes, sir.

Q. We come now to the Bank of Virginia. What was the State's ownership in the stock of that bank?

A. 13,766 shares, par $70, total value $963,620, par.

Q. (Handing book.) I observe on your exhibit, page 50 of the printed record, you have described, as you did in the case of the Farmers' Bank, the item shown in the report of the officers as surplus and contingent fund, as profit and loss. You did not make an accurate transcription of the report in this case in that particular, did you?

A. No, sir, I used the term profit and loss instead of surplus and contingent fund.

Q. Now, Mr. Hillman, I also find on your exhibit, page 50, under the heading assets, you have an item of $18,900, which you have described as unredeemable—stolen notes. How was it described in the report of the officers, that item?

A. Lost by robbery at Portsmouth in $100 notes.

Q. Have you included in the assets of the bank upon which you have based your calculations of book value that item of $18,900, described in the report of the officers as loss by robbery at Portsmouth in $100 notes?

A. Yes, sir.

Mr. Holt: What was the amount of that item, Mr. Harrison?

The Master: $18,900.

Q. Is it proper to include that item of loss in estimating the profits of the bank?

A. Yes, sir, in this case I should say it was.

Q. Why in this case any more than in any other case? If the bank had lost $18,900, how can that constitute an asset upon which you can base value?

A. Because the entry of that item, where it appears in the 1859 report, is stated as notes not to be redeemed because of robbery at Portsmouth. They had their entire amount of liability on account of their circulation outstanding, but here is an item which they would never be called upon to redeem. Practically, payment had been stopped on those notes, and therefore they had included it as an asset, when they should have deducted it from their circulation. The amount would show the same in either case.

Q. How could the bank stop payment on notes that it had issued, because they had been stolen?

The Master: He did not say they could.

Mr. Harrison: He is basing his answer upon some assumption of that sort.

The Master: Not exactly upon that; he was simply using that as an illustration, as I understood it.

The Witness: They had stopped payment and took it up as an asset to offset outstanding notes.

Mr. Lilly: Their circulation was charged up as a liability, and naturally they would not have to pay.

Q. Is your answer a matter of assumption?

The Master: When you say that they had stopped payment, that is what he means.

A. No, sir, it is not assumption.

Q. Where is there evidence that the bank had stopped payment?

A. The notation in the 1859 report.

Q. Have you got that before you?

A. No, sir, I have a note from that report, on the side.

By Mr. Lilly:

Q. Suppose you read the notation?

Mr. Harrison: I would rather he would produce the original.

The Witness: Notes not to be redeemed because of robbery at Portsmouth, $18,900.

Q. Does that show that the payment had been stopped? In other words that is what you rely upon for your conjecture or statement that payment had been stopped, is that true?

A. Yes, sir.

Q. And is it your testimony now that payment had been stopped? Is that your construction of that entry?

A. Yes, sir.

The Master: I was mistaken in my suggestion.

Mr. Holt: No, you were right as his answer originally stood, he was illustrating simply, that as they treated it practically it would be the same.

Q. Now will you please tell us whether—

The Witness: Your Honor, may I read from this document which has been asked for?

The Master: If there is no objection on the part of Mr. Harrison.

Mr. Harrison: I do not object to his reading anything that is pertinent.

The Master: Is it something that explains that item?

The Witness: Yes, sir.

The Master: All right.

The Witness: Document No. 14, page 8, under the date of January 1, 1859, reads, "Lost by robbery at Portsmouth office in $100 notes, not to be redeemed, $18,900," carried as an asset.

Q. Do you find on this entry that you have just read the words "Carried as an asset," which you gave as purporting to be the language?

A. I did not give it as purporting to be a quotation.

Q. That is your own statement then?

A. Yes, sir.

Mr. Holt: He has just told the stenographer where to put the quotation marks, while you were looking at it.

Q. Now will you tell us whether the statement, the report of the officers upon which you rely, shows whether that bank

had any bad or doubtful debts on hand as per the statement of January, 1861, if so, how much?

The Master: As a part of this asset.

Q. That is page 8, Document No. 14, the tabular statement of the Bank of Virginia, January, 1861?

A. From that statement I am afraid I will have to give it up, I do not know.

Mr. Harrison: There are two items right under the caption on the tabular statement.

The Master: What is the trouble about that, Mr. Hillman, about this $6,412?

The Witness: That is for the quarter ending January 1, 1861. There are three other items mentioned below about which nothing is said. I could not tell what that entry meant without examination of the whole matter.

Q. Is January 1, 1861, the date of the balance sheet?

A. Yes, sir.

The Master: I will tell you what this shows, quarter ending January, 1861, bad debts, $6,412, and then doubtful debts. The next entry is 1860, November 1st, and then December 1st, and then the next notation is January 1, 1861. I can understand how you might want to take it to look it over, but it seems to me that is pretty plain. I wanted to see what the book showed, to see why it was necessary to take four or five minutes to get the answer to that question.

Mr. Holt: When an entry of that kind is asked for, Mr. Hillman, give it. If you have any explanation to follow it then give that.

The Master: We cannot all wait here to look this whole matter over. The effect of this testimony is not up to you, Mr. Hillman. You are to give it and let counsel take care of the effect of it.

The Witness: One page 8, Document 14, under the heading quarter ending January, 1861, there are bad debts shown for $6,412; doubtful debts, $43,973.57.

The Master: We will suspend right here until half past two, and instead of running along until half past five, which would be our regular time, on account of the fact that the

stenographers have been bothered a good deal by not having any electric power and have had to dictate to the typewriter, and might have to work until about midnight, I am going to stop at five to give them an opportunity to get their work out.

Mr. Holt: Before you adjourn, there is one matter that I want to call attention to. On Saturday evening I asked our friends upon the other side, General Anderson, Mr. Harrison, Mr. Robinson and Mr. Potter, to expedite the matter if they could in one direction by a stipulation according to what I believe to be the fact, and that was that all of the assets that we are now seeking to vouch were paid out of the proceeds of the bonds that constitute the debt in controversy here, of Virginia. And it was suggested upon the other side that that was true, as I understood these gentlemen, and the loans also were made out of the proceeds of the bonds that evidence the debt of Virginia prior to 1861; that was true with respect both to stocks and to bonds, except in a few instances where the proceeds were so used and earnings were derived from the investments thereof, and the earnings used also in the purchase of the assets sought to be valued here. I thought they were going to agree to that, and so I prepared a stipulation to this effect:

"It is stipulated of record by counsel for the States of Virginia and West Virginia, as well as by counsel for the bondholders, that the various stocks and bonds mentioned and described in Classes B, C, D, E, F and G set forth in the exhibits to the defendant's supplemental answer herein, were purchased by the State of Virginia prior to the 1st day of January, 1861, out of the proceeds of the bonds of the State of Virginia evidencing the public debt of said State that was apportioned between the two States by the decision of the Supreme Court of the United States rendered in this cause on the 6th day of March, 1911, or with the earnings of securities so purchased. Also, that the loans mentioned and described in said Classes B to C inclusive were made out of the proceeds of said bonds or the earnings from the investment of said proceeds; and that the Blue Ridge Railroad was likewise con-

structed out of the proceeds of said bonds or the earnings from investment of their proceeds."

Now I learned this morning that there may be some little difficulty about their agreeing to that; and the reason I bring it up at this time is this; if these gentlemen feel that they cannot stipulate those matters I want to know it at as early a date as possible, because it means a tremendous pile of documentary evidence here, and I am seeking to avoid that and shorten the record and save time. If these gentlemen believe or know those things to be facts I hope they will see their way to the stipulation.

The Master: Well, if they are true or they are willing to concede they are true, with such exceptions as they may stipulate or specify, that would narrow the inquiry as to those exceptions. I have not any doubt, as far as that is concerned, that the counsel for Virginia are prepared to make every concession that they can legitimately make with safety to the rights of their clients.

Mr. Anderson: I will very briefly reply to what my friend has said. Counsel for Virginia will be very glad to enter into any stipulation which will expedite the hearing of this case—

Mr. Holt: And which is according to the truth.

Mr. Anderson: —without doing injustice to either of the parties, or conceding as true what we do not know to be true. We could not agree to this stipulation because these securities were not purchased—that is an inaccurate and we think a misleading statement. That is one objection we have to it, but not the most important. The fact is that, in every case in which these stocks were acquired by the State, or in which loans were made by the State to these improvement companies, they were not made primarily as investments at all. As the former record of this case overwhelmingly shows, they were made in carrying out an internal improvement policy of Virginia, in aid, not for the purpose of gain by the State but in aid of these internal improvement companies, for the purpose of developing the Commonwealth, and more especially for the purpose of developing that portion of the Commonwealth which now constitutes West Virginia.

The Master: I do not understand that the stipulation goes so far as to foreclose you from taking that position.

Mr. Holt: Oh, no.

Mr. Anderson: It would if we signed this paper, because it says they were purchases made by the State. If your Honor please, at great cost of time and labor the truth in regard to this matter has already been put into this record. This record shows in detail every bond issued by the State of Virginia, and the purpose for which it was issued, and it shows too, *prima facie* at least, for what purpose every dollar of the avails of those bonds was expended. It is not true, as we find, your Honor, that all of the money which went into these improvements came from the sale of these bonds; a very considerable part of it came from other sources, not only from dividends on these bank stocks, which do not represent these bonds at all. A large portion of them went to the internal improvement, as my friends well know, as certainly the senior counsel, Mr. Hogg, knows, because it was proved in this case, and never controverted by West Virginia. In addition to that, in some cases, as we are satisfied, the surplus general revenue of the State went into the construction of some of these internal improvements. So that we cannot agree to this.

The evidence is all here; my friends have it here in this record, showing how every dollar was expended and whence it was derived. And why we should be asked now to concede facts which we do not believe to be facts and which the record does not show to be facts, I cannot understand.

The Master: West Virginia has made a suggestion as to which they are willing to enter into a stipulation. The counsel for Virginia do not feel at liberty to agree to the stipulation, and that is the end of it.

Mr. Anderson: Just one word—

The Master: If we do not get anywhere there is no use arguing it.

Mr. Anderson: Let me call attention to the fact that Exhibit A-1 of the Decree, shows the purpose for which the bonds of Virginia were issued. The exhibit designated in this record as Plaintiff's Exhibit No. 1, gives every Act of Assembly which

was passed by Virginia making appropriations as authorizing the issue of bonds; and shows for what purpose it was made.

The Master: If all that appears in the record there is no reason why these two accountants should not sit down together, or somebody, and cipher that out; and as to what that shows you can agree. There is no occasion for printing a lot of detail that is indisputably proved. That is my judgment about it. Whether they would be willing to accede to your broad judgment, Judge Holt, does not seem to be possible. But if a large number of items can be eliminated by taking what is in the record, you may agree as to that.

Mr. Holt: Of course if my stipulation is too broad—I expected to correct it and make the necessary exceptions. I do not want to ask these gentlemen to stipulate anything into the record as a fact that is not true. But where any portion of the securities that we are now seeking to value were purchased with the proceeds of the bonds evidencing the debt I would like to have a stipulation to that effect. And where there are others that were paid out of general revenue, let them be excepted.

The Master: Yes.

Mr. Holt: And by a few lines in that way we can shorten the record very much. In the first place it will relieve us from putting in a lot of Acts here that we would like to avoid putting in, but even if we were to fall back upon the original record, it is not sufficiently full for our purposes, and yet the intimation is very strong there in the direction of what we contend for. All I ask these gentlemen to do is not an unreasonable thing, but where they can fairly admit that, and safely, to be a fact, we hope they will do it. But wherever it becomes necessary to make an exception, of course we would not ask them to stipulate without naming the exception.

The Master: What is the reason that Judge Holt, or some one else representing West Virginia, cannot sit down with some one on the other side this evening and go through this matter in detail and find out as to what you can agree and as to what you disagree?

Mr. Conrad: Or even perhaps better than that, let Judge

Holt submit specifically the objects for which he believes the proceeds of the public debt had been invested. Where we find that is the fact I think we can say it will be conceded.

Mr. Holt: That is really along the same line as the Master's suggestion, except I am to do it alone instead of two.

Mr. Conrad: The proposition comes from you; West Virginia is making the proposition in the interest of economy of time. I suggest that that motive, that object, can be promoted vastly, if you would just by a memorandum indicate certain specific objects in which you believe the proceeds of the public debt have been invested, and then we can in a few moments from the record and memoranda in our possession see whether you are right.

The Master: We will suspend now until 2:45.

Recess taken until 2:45 P. M.

AFTER RECESS.

Continuation of the cross-examination of

CONWAY W. HILLMAN.

By Mr. Harrison:

Q. Did you make any allowance for the bad and doubtful debts in figuring your book value of this stock?

A. No, sir.

Q. Please tell me by reference to the comparative state of the Bank of Virginia, including the branches, on the 1st day of January, 1861, and the 1st day of January, 1860, as shown on document No. 14, pages 6 and 7, whether there was any falling off in the deposits of the Bank of Virginia.

A. Yes, sir, there was between the year ending January 1st, 1860, and January 1st, 1861.

Q. What was the amount?

A. $428,180.31.

Q. Now, was there any falling off between those two periods, namely, January 1st, 1860 and January 1, 1861, of the bills and accounts receivable of that bank, if so to what extent?

A. I do not see any such item on the account.

Q. I call it bills and accounts receivable; I had reference to the first asset, debt outstanding. It is on the asset side.

A. Yes, sir, there was a decrease in the outstanding debt on the asset side.

Q. To what extent?

A. $235,911.36.

Q. Was there any falling off in the third column, stocks, on the asset side?

A. Yes, sir, there was.

Q. To what extent?

A. $37,650.

Q. Now, was there any falling off between the years 1860 and 1861 of the fourth item, specie, on the asset side?

A. Yes, sir.

Q. To what extent?

A. $152,190.04.

The Master: I want to suggest here that if we do not exhaust this line of inquiry this afternoon, I want Mr. Hillman to come in prepared with computations on this same line, because I do not want to wait here and have the computations made here, that is, if we do not exhaust it this afternoon.

Mr. Harrison: I think we will exhaust it.

The Master: If not, I want him to make the computations out of court and let him testify to it without delay. I cannot delay the hearing any more than is absolutely necessary for the computations. It takes an awful lot of time to get this testimony in in this way. I am sorry we had not thought of this this forenoon. Cannot you have somebody outside take these other banks and go through these banks so you can have them right ready to you?

The Witness: No, sir. We only have one copy of this book and I am constantly asked questions on it.

The Master: I do not want to hurry it at the expense of being accurate, but if somebody else could be doing it, we could pull this right off very readily.

Mr. Lilly: The delay now is occasioned by Mr. Harrison.

The Master: Yes, that is true.

Mr. Lilly: And Mr. Hillman cannot anticipate these questions.

The Master: It is not Mr. Hillman's fault. Mr. Hillman is all right. He cannot carry these things in his head.

Q. What does the tabular statement of the bank that we are now dealing with, in document No. 14, show in respect to the surplus, is there an increase or decrease in the surplus between the years 1860 and 1861?

A. There is a decrease in the Surplus and Contingent Fund.

Q. To what extent?

A. $14,906.45.

Q. You have shown by your Exhibit No. 5, page 49, that on the 1st of January, 1861, this stock had a book value of $6.30 premium or $76.30 a share.

The Master: That is $70 par value.

A. Yes, sir.

Q. Now, I ask you whether in view of the analysis of this statement upon which your figures are based and which we have just gone over, the condition of the bank, in your judgment as an expert, was good, bad or indifferent.

A. Based on the figures which had been quoted only, it would show a bad state of affairs; based on the entire trial balance it is not a bad showing.

By The Master:

Q. Does it indicate a prosperous condition or otherwise on the part of the bank?

A. Prosperous, when I take the entire trial balance into account. If I am confined only to the items mentioned it will show a very bad state of affairs.

By Mr. Harrison:

Q. The report I guess will speak for itself, the tabular statement that we are dealing with.

A. Yes, sir.

Q. Do you show the same result for the year 1863 that you do for January, 1861, in respect to this bank?

A. Yes, sir, with the same notations on the exhibit, page 38 of the blue prints.

Q. You relied for the year 1863 upon the same report of the officers and tabulated statement that we have been considering and which you relied upon for January, 1861?

A. Yes, sir.

Q. And outside of what is shown on that statement, you have no knowledge or information about the value of the stock of this bank at either period, January 1, 1861, or June 20, 1863?

A. Nothing outside of the statement shown on page 38 of the blue prints.

Q. And that statement is founded upon the report of the officers found in Document No. 14, is it not, which we have just been investigating and analyzing?

A. Yes, sir, it is, together with the notation of the dividend which is found in other places.

Q. You did not I believe look to the question of a market quotation for the stock of this bank at either period?

A. No, sir, I have made no investigation as to the market quotations of this stock.

Q. Is the market quotation of stock an important element in determining what its value is?

A. No, sir, I would say it was a secondary evidence only.

Q. That then according to your judgment would not be a matter that one would take into consideration in determining the value of stock?

A. No, sir, only as a secondary evidence.

Q. What do you mean by secondary? Do you mean to say that it would not influence your judgment as to the value of this stock?

A. I mean that in the value of the stock as evidenced by market quotations other elements enter into it which have nothing to do with the stock in question, for instance, the tightness of money, and often times a corner in stock or shortage in stock.

Q. I am not referring now to any special circumstance that might be taken account of in the matter of market quotations of stock, but I am inquiring as to the general proposition

whether the market quotations of stock, that is to say, the market value of the stock, as represented by the sale as shown by the market quotation—

The Master : Why don't you confine your inquiry to bank stock?

Mr. Harrison: I will take bank stock. I was inquiring with reference to any stock.

The Master: I do not know that you want to make it as broad as that.

Mr. Harrison: I may have done that already in reference to railroad stock, but I thought the question would be applicable to any security.

The Master: I have no suggestion to make. I did not know but what perhaps you would prefer to confine it to bank stock rather than cover the whole broad field of stock speculation generally, but you pursue your own idea.

Q. I just want to know if I correctly understand you as giving the expert opinion that the market quotations if of any importance at all, are only secondary in influencing the judgment as to the value of that stock at a particular time.

A. Yes, sir.

By The Master:

Q. What do you consider the primary factor in determining the actual cash market value? Now, it is not a question of intrinsic value, but a question of the actual cash market value, which may be quite a different thing from intrinsic value. You appreciate that difference I take it?

A. Yes, sir.

Q. What do you consider the primary factor? You say this is secondary. What in your judgment is primary in determining the actual cash market value, that is, what it will sell for?

A. In determining the actual cash market value it would be the quotations of an active or reasonably active market.

Q. You mean that would be the primary factor?

A. Yes, sir.

Q. I may have got you wrong, but I understood you to say

in answer to Mr. Harrison's examination that it was a secondary factor.

The Master: I simply want the witness to have an opportunity to place himself right.

Q. Your judgment is then that a normal market quotation, uninfluenced by corners or artificial efforts to control the market, would be the primary factor, is that what you mean?

A. Yes, sir, necessarily because that would indicate what the cash value was, and you could not get more for it than the stock quotation.

The Master: I think that covers the whole ground. I was simply trying to get what the primary factor was.

Mr. Harrison: That is what I am trying to get at.

The Master: Have I helped you some?

Mr. Harrison: Yes, sir, you have helped us both.

By Mr. Harrison:

Q. Then if I correctly understand you, market quotations of bank stock are of primary importance in determining the actual cash value of the stock?

A. Yes, sir; you understand me correctly in determining the amount of cash which you could get for the stock, is that what I understand?

Q. You draw your own distinctions.

A. In determining the amount of the cash which you could obtain for the stock at that period.

Q. Does not that represent its market value?

(No answer.)

Q. What became of this bank, if your investigations tended to devolop the subsequent history of the bank, after June 20, 1863.

A. I don't know what became of it.

Q. Your investigations did not extend beyond June 20, 1863?

A. Yes, sir, we ran a little beyond June 20, 1863, in determining whether or not dividends had been paid on this stock

later on, so that we ran beyond that date up to, I think, if my reccollection serves me, January 1, 1865.

By The Master:

Q. What did you find there?

A. Dividends being paid on the stock.

Q. Did you find any after that date?

A. No, sir, because we ended all investigations, as I told you, in April, 1865, on account of a break in the books of the State of Virginia, and we stopped all investigations at that point, unless we came to sales of stock afterwards, but taking off dividends or anything of that kind, we stopped there.

By Mr. Harrison:

Q. You found the books of Virginia broken, but did not find the banks broken?

Mr Holt: He did not say that.

A. I made no investigation of what became of the banks after the payment of that dividend.

Mr. Harrison: I will at this moment because my attention is called to it, go back to Class D, page No. 36 of the blue prints, and the question I want to ask is merely because your Honor inquired this morning if there was an agreement between the accountants in respect to the accuracy of the figures stated.

The Master: Yes.

Mr. Harrison: Did that inquiry apply to 1863 or to 1861?

The Master: That was intended to apply to both 1861 and 1863. Now, if there is any inadvertence about that we can correct it of course. I will say this, where that statement appears generally to have been made it will not foreclose either side from raising a question as to an item, but if no questions are raised to items, why, the admission goes. We can clean the record up by the admission, but that does not foreclose you from showing that inadvertently an admission was made that ought not to have been made. But unless attention is called to some particular item, the admission goes and the record is cleaned up as far as that is concerned.

Mr. Harrison: Yes, sir. In that connection I will say

that item 20 on that blue print, Blue Ridge Railroad, tolls for use of, this is June 20, 1863, there is extended under the totals an item of $5,853.81.

The Master: Yes.

Mr. Harrison: And the attention of the West Virginia accountants was called to that item this morning as an erroneous item, it having been paid on March 2, 1863.

The Master: That does not affect the accuracy of the mathematical statement?

Mr. Harrison: No.

The Witness: I say that the item which is entered there was entirely erroneous, the entry as of the date of January 1st.

The Master: Put that this way, the entry of $5,853.81 under the column headed totals is an erroneous entry, is that right?

The Witness: Yes, sir; it should be $30,266.80.

The Master: That is, $5,853.81 should be stricken out and this item of thirty thousand odd dollars should be inserted in its place?

The Witness: Yes, sir.

Mr. Harrison: We just wanted to get his statement of whatever correction he wanted to make.

The Witness: Shall I proceed?

The Master: Yes.

The Witness: The entry as mentioned here was of January 1, 1863, and should have been entirely ignored, since we are dealing with the date of June 20, 1863. It seems however that my assistant's eye got that entry and used that, which was the line above the one he should have used, and pro rated that from the date of its payment, March 2, 1863, using the date 1864 which applied to the entry below, and therefore the mistake was made. He was catching one line above the proper entry.

The Master: You say then there ought to be inserted this $30,000 in its place?

The Witness: Yes, sir, which is an amount paid March

31, 1864 of $64,984.49, totals for the year ending January 1, 1864, which pro rated on the time basis yields $30,266.80.

The Master: That item will be checked up later by Mr. Potter?

Mr. Harrison: Yes, sir.

By Mr. Harrison:

Q. Take up the next item, Bank of the Valley, shown on Exhibit No. 5, page 51 of the printed exhibits. What do you show the total number of shares owned by the state in the stock of that bank to be?

A. 4,839 shares.

Q. And with a par value of what?

A. 100; total of $483,900.

Q. And what is the book value of that stock according to your exhibit as of January 1, 1861?

A. $111.20.

The Master: Per share?

The Witness: Yes, sir, per share. Your Honor, I will have to make a corrected statement here on my testimony a moment ago, and that is, the last dividend that I find paid to the state on account of its bank stock was, on the Bank of Virginia, January 3, 1863; Farmers' Bank, June 11, 1863; Valley Bank, January 23, 1863; Exchange Bank, July 10, 1863, and the Northwestern Bank, February 4, 1861, as that bank was over in West Virginia.

Mr. Holt: Do you mean by that that those are the last dividends you found paid by those banks?

The Witness: Paid by the banks to the State of Virginia.

Mr. Holt: That is what I mean.

The Witness: Yes, sir.

Q. Look at the balance sheet of the Bank of the Valley, document No. 14, page 35.

A. Yes, sir.

Q. I will ask you if you have not based your calculation of the value of this bank on a surplus which contains a possible loss of over $43,000, represented or rather shown by the statement on a payment deficiency in the cash account of the late

teller of the mother bank, arising from overdrafts and so forth remitted by him, $13,522.12, and this notation by the directors of the bank, "In addition to the amount of ascertained liabilities as stated, it is proper to add that there may probably be due to the mother bank the bank's deposits above $30,000 for omissions on the part of the late teller to enter credits for remittances and deposits. The precise amount not yet accurately ascertained. No ultimate loss however to the bank by his credits is apprehended."

A. However that may affect the balances of the profit and loss in the bank, I have not considered it.

Q. Referrring to our schedule, page 53, do those notations that I have just read and the description of the deficiency due on account of the overdrafts permitted by the teller appear?

A. No, sir.

Q. Why not? Should they not appear in order to be an exact copy of the balance sheet?

A. No, sir, they should not be a copy of the balance sheet, they should not appear.

Q. They are on the balance sheet as shown by the report of the officers, are they not?

A. They appear as foot notes on the same sheet where the sheet is shown, they are not part of the balance sheet.

Q. If they are explanatory of the balance sheet ought they not to be shown?

A. No, sir, I think not, when the foot note on page 35 is considered, no ultimate loss however to the bank is apprehended.

Q. If you were auditing the bank would not you take that up as a contingent liability?

A. I would mention it, but I would not take it up as a liability until I had determined the amount.

Q. Then as the directors saw fit to mention it on their report, their balance sheet, my question was, in order that we might have the benefit of an exact copy as was purported to be of that balance sheet, why did you not include it?

A. Because it is not included in the balance sheet.

Q. What do you mean by not included in the balance sheet?

Do you mean to say it is not on the page that the balance sheet appears on?

A. Yes, sir, it is printed on that sheet.

Q. That is what I mean, that it is on the balance sheet, it is printed on the same sheet that the figures are printed on.

A. All right, sir, it is printed on the same sheet that the figures are printed on. I did not take it into account, nor would I consider it necessary to take it into account.

Q. And it is explanatory of the account?

Mr. Holt: I would like to ask a question.

Mr. Harrison: I would rather you would re-examine him.

Mr. Holt: I want to ask whether in adding up the liabilities on the one side and the assets on the other side the item appears in either column.

The Witness: No, sir, it does not.

Q. Do you mean to say that the $13,522.12 is not in either column?

A. Yes, sir, that is taken into account.

Q. And that is the item that the directors qualified by saying that it is a deficiency in the cash account of the teller?

A. Yes, sir.

Q. With a foot note explaining it?

A. Yes, sir.

Q. Neither foot note have you put on your alleged copy of that document or have you put on it the explanation which the directors gave of that item of $13,522.12?

A. No, sir; I have not copied either footnote nor another foot note which is headed indebtedness of directors, which immediately precedes this foot note.

The Master: How much did the directors owe?

The Witness: January 1, 1861, it shows $52,308.59.

Q. Does the comparative statement show any decrease in the profits of this bank between 1860 and 1861, the comparative statement on the next page?

A. Yes, sir, it shows a decrease of $4,519.60.

Q. That is profit and loss and surplus, isn't it?

A. Yes, sir.

Q. Now, as to the deposits?

A. That also shows a decrease in deposits.

Q. Of how much?

A. Of $48,051.99.

Q. Do you give the same value to the stock of this bank, to the Bank of the Valley, in June 1863, that you do in January 1861?

A. Yes, sir.

Q. And is the value of June, 1863, based upon the same reports that the value for January, 1861, is based on?

A. Yes, sir.

Q. And independently of those reports you have no knowledge or information as to the value of this stock at either period?

A. No, sir, outside of that and of the dividends quoted as declared upon sheet No. 40 of the blue prints, 1863.

Q. I will ask you the same question in reference to this bank, did your investigations or inquiries lead you to the ascertainment of the fact as to what became of the bank, whether it ceased to exist or whether it is still in existence?

A. No, sir, I made no investigation.

Q. Do you know what became of the state's holdings in this or either of the other three banks that we have been discussing?

A. No, sir, I do not.

Q. Now, I call your attention to the Exchange Bank, shown on your exhibit No. 51, page 52. What is the total holdings of the State in that bank as shown by your exhibit, January 1, 1861?

A. 8,755 shares.

Q. And par value of how much?

A. Par value of $100, $875,500.

Q. What do you show the net value, you call it book value of that stock, to be January 1, 1861?

A. $107.40 per share.

Q. Or premium of $7.40, wouldn't it be?

A. Yes, sir.

Q. Well now what do you show to be the profits on which your book value is based?

A. $342,170.29.

Q. Does not that include $191,584.24 described as a contingent fund?

A. Yes, sir, it does, and is so stated on page 52.

Q. What were the earnings of this bank, as shown by the tabular statement found on page 23 of Document 14, for December 31, 1860?

A. The profits of the institution entered there are $150,586.05.

By The Master:

Q. Is that the way it appears in the report, "Profits of the institution?"

A. Yes, sir.

The Witness: And I do not consider that they are the profits of the bank for the year at all.

By Mr. Harrison:

Q. What dividend was the bank paying, or did it pay for that year?

A. 7½ per cent.

Q. What would the total dividend amount to?

A. $235,282.50.

Q. Then if the total dividends amounted to that figure, namely $235,282.50, and the profit earned, the profit of the institution earned as of December 31, 1860 was $150,586.05, the bank did not earn its dividend, did it?

A. If those are the facts it did not earn its dividend.

Q. Well, now by how much did it fail to earn its dividend, based on those figures?

A. Supposing those to be the facts, it failed to earn its dividend by $84,695.45.

Q. I find that the sworn statement of the officers of the bank report the profits of the institution of that year to be $150,586.05, as you have testified to. What is there in the statement to indicate that the sworn statement of the officers is not correct?

A. That is a running account, the profits of the institution,

to which the profits are added and from which the dividends are deducted, and from which from time to time payments may be made to a contingent or surplus fund. It is a running account and does not represent the earnings.

Q. How do you know it is a running account? Have you seen anything except this statement upon which you base that statement?

A. No, sir, but it can readily be deducted by a comparison of the profits and losses for this year and for the last year.

Q. Then it is a deduction that you draw in spite of the explicit statement of the directors?

A. It is an absolute fact which you can draw from these two statements. The profits of the institution, I state are a running account, and that when this statement is made of the directors—

By The Master:

Q. How did you know what was in that running account if you had never seen it?

A. For the reason, your Honor, that the dividends must come from the earnings or from the surplus. It is shown that in each of these years which we have examined the dividends have exceeded this amount which they say were profits of the institution. If they had been the entire profits that would have been a wiping out of the profit and loss account and a severe reduction of the surplus account. Therefore that must be a running account, and the profits which are carried to that account before the deductions for dividends or other items are made must have been larger than this amount. Therefore it is absolutely sure that the profits must have been larger.

By Mr. Harrison:

Q. That is your deduction? Am I correct in that?

A. Yes, sir.

Q. Now, how does your June 20, 1863, statement turn out in respect to the value which you give this stock as of that date?

A. We have used the same value, viz. $107.40 per share, in 1863, page 41 of the blue prints, as in 1861.

Q. And you have no other information or knowledge as to its value on either date except what you have derived from the statement of the officers of the bank as contained on Document No. 14?

A. None save that and the notation as to dividends paid which I have made on page 41 of the blue prints.

Mr. Lilly: Mr. Harrison, may I ask just one question?

Mr. Harrison: Yes.

By Mr. Lilly:

Q. You have given an explanation with reference to this last bank. Does that apply to the other banks concerning which Mr. Harrison has asked you?

A. Yes, sir, it does.

By Mr. Holt:

Q. In other words running account covers the profits of the institution?

A. Yes, sir.

Q. In the case of all banks?

A. Yes, sir.

Mr. Holt: That will save a tremendous amount of re-direct examination on that point.

By Mr. Harrison:

Q. Now, we come to the next item—

The Master: Before you go to that I should like to have you put into the record his theory by which he demonstrates the existence of this running account.

Mr. Lilly: I think I could make a statement possibly—

Mr. Harrison: Let the witness state.

Mr. Lilly: I thought he had finished with that examination.

By The Master:

Q. What I want is, you say you can take the history of this bank for two years and demonstrate that this item of profits

of the institution does not cover all of the profits of the institution. Now take the trial balances, for two years and give me your figures, and put the demonstration on the record so that I can understand it. I want to know how it is, from the trial balances of this bank, it can be demonstrated that there was in existence a running account, the result of which was $150,-586.05. Now cipher that out for me so that I can understand it.

Mr. Lilly: Your Honor does not mean to call for it at this moment?

The Master: Yes, I want him to put it right in here now. He can do it if it does not take too long.

Mr. Harrison: He might do it over night.

The Master: Then I won't let him stop to do it now, but I will have him bring that in to-morrow morning the very first thing. Be prepared with a concrete, precise, mathematical demonstration of this proposition, so that it can be clear on the record, so that I can understand it. I feel bound to say that I do not understand it now, and it does not go for anything unless I do understand it.

The Witness: All right.

The Master: You know what I want, Mr. Hillman.

The Witness: Yes, sir.

By Mr. Harrison:

Q. Now we come to the Northwestern Bank, page 53. What is the amount that you show there to be the holdings of the State of Virginia in that bank on January 1, 1861?

A. 3,744 shares, $100 each, $374,400.

Q. How much of that 3,744 shares was what was described as bonus stock?

A. I do not know, sir. I do not know what you mean by bonus stock.

Q. Well, it all appears in the original record, and there—I will give the reference if it is necessary, but I won't stop to do it now—there it appears that 326 shares of that amount was called bonus stock, and conceded that the State had not paid

any consideration for it, but it came as a bonus with a subscription.

Mr. Lilly: You mean to introduce proof of that later?

Mr. Harrison: I will refer to the record. I am not going to prove it; it is in the original record now. I thought the accountant had said something about it in his direct examination.

The Master: Of course if you rely on part of the original record to establish that fact it will be necessary to call their attention to it undoubtedly. It is in the summary of the Master's report.

Mr. Lilly: I have not seen that. They ought to introduce it.

The Master: It cannot go into the record without your attention being called to it.

The Witness: No, sir, I am not familiar with that fact, if it is a fact, that 326 shares is bonus stock.

Mr. Holt: It would be immaterial on the question of value anyhow, whether it was given to the State or bought by it. We owned it, however it was.

Mr. Harrison: I am going to refer to that again.

Q. What do you show to be the market value of 3,744 shares not market value, I mean your book value, of the Northwestern stock, January 1, 1861?

A. $108.40.

Q. That gives a total value of how much?

A. $405,849.60, page 53 of the printed record.

Q. You have charged that to the State of Virginia have you not?

A. Yes, sir.

Q. Why did you do that?

A. Because the State of Virginia at that time owned these shares.

Q. Did you charge the value of that stock to the State of Virginia under your statement of June 20, 1863?

A. Yes, sir.

Q. Why did you do that?

A. The books of Virginia showed that amount of stock still on them as still on hand.

Q. Were you aware that the supplemental answer of the defendant conceded that whatever value that stock possessed should be charged to the State of West Virginia?

Mr. Lilly: I want to correct that as a statement of fact because we concede only a certain part of it. Part of it was taken over by the Jefferson people.

Mr. Harrison: I said whatever value the stock possessed was included in the part that he charged to the State of West Virginia.

Mr. Holt: You misunderstood Mr. Lilly.

The Master: If there is any question raised about what the answer says, refer to it.

Mr. Harrison: I will withdraw my last question and put it over again.

Q. Were you aware that the supplemental answer of the defendant conceded that $210,200 of the value of that stock should be charged to the State of West Virginia?

A. Yes, sir; I was.

Q. And in spite of that you charged the whole of it to the State of Virginia?

A. Yes, sir, I put the whole of it up for consideration. I had as yet made no deduction from the totals on account of the transfer of that stock of the Northwestern Bank; and at the same time I might mention, of the Fairmount Bank, to West Virginia.

Q. Why were you putting up for consideration the item that West Virginia did not claim?

A. We have this item to show the total value of that stock on that date. Afterwards there was practically a payment made on the stock, you might call it so, by transfer to the State of West Virginia, of certain bank stocks, which I have not taken into consideration in this computation. I did not consider that it had its place here.

Q. You know how much this stock cost the State of Virginia?

A. I should say it cost the State of Virginia par as far as my knowledge goes.

Q. Do I understand you to say now that the State of Virginia paid $374,400 for this stock, for the 3,744 shares?

A. Yes, sir.

Q. What is your authority for that statement?

A. I have only the authority that it was entered upon the books as of that value, par value, on that date. I did not run back to see whether it had been actually paid in in money; I supposed of course it had.

Q. Now by reference to Defendant's Exhibit G-1, page 10, page 820 K of the original record, paragraph 7 of the Decree you will find the total amount of that stock, January 1, 1861, is shown to be 3,418 shares, which exhibit did not take into account 326 shares which the State had acquired without paying any money for them. Do you find the total given there?

A. Yes, sir.

Q. As 3,418 shares?

A. I do, yes, sir

Q. Now by reference to the report of the Master, at pages 189 to 192 inclusive—have you examined the report of the Master?

A. Yes, sir, I have read it.

Q. Did you examine what he had to say about this stock?

A. Yes, sir, I have read his report.

Q. Well, he charges to West Virginia the total value of the 3,418 shares, does he not?

A. I do not recall, sir.

Q. Well, if you will look at the page, I will be glad if you will so that we may be in agreement about it. Have you got the report before you?

A. I have not.

Q. I will hand it to you—or I will read it to you.

The Master: What is the page of the report?

Mr. Harrison: The discussion begins on page 189, about the center of the page, and the precise reference is about the middle of page 190.

Q. As appears from the report of the Master it was first conceded by West Virginia that the total value of 3,418 shares should be charged to her—

Mr. Holt: Is that conceded in the Master's report?

Q—the point being made that West Virginia ought not to be charged with the 326 shares, which Virginia did not press. Subsequently, after making the concession that West Virginia should be charged with the whole value of 3,418 shares, West Virginia's counsel amended that contention and insisted that she ought not to be charged with more than $105,100, as shown on page 190 of the Master's report. But under the findings of the Master, which are concluded on page 192, the West Virginia contention was rejected, and West Virginia was charged by the Master with 3,418 shares, at a value of $125 a share, which he ascertained to be the reasonable value of the stock as of January 1, 1861.

Mr. Holt: At what do you put the value of that stock on your schedule there?

The Witness: $108.04.

Q. Making a total charge against Virginia on account of the Northwestern Bank of $427,250, which excluded 326 shares, because West Virginia thought she ought to be excused from accounting for that, as the State has not in the first instance paid money for it.

Mr. Lilly: Is it contended that West Virginia got the branch bank over in Jefferson?

Mr. Harrison: I did not understand your question.

Mr. Holt: The part of that finding, your Honor, if I understand it, is the result of the lack of evidence.

Mr. Harrison: All the evidence was here, I think, Judge.

Mr. Holt: Well, if I am wrong you will correct me. The theory being that the whole of that Northwestern Bank went to West Virginia, when as a matter of fact it did not.

Mr. Harrison: That was the contention that West Virginia's counsel made.

Mr. Holt: It had a branch bank in Tazewell, Virginia, that carried a part of these assets with it and never got across the State line at all. How much was that, Mr. Lilly, $160,000?

Mr. Lilly: Well my memory is about $160,000; I do not remember definitely.

Mr. Holt: The theory there was that it was all over in West Virginia, when it turned out subsequently, or seems to be a fact now at least, that one of its branches was still in Virginia and we did not get that at all.

Mr. Lilly: And the Confederate government took charge of it.

Mr. Holt: Of course that will be up to us to show.

Mr. Lilly: It is up to them to show it.

Mr. Anderson: My recollection is it was a claim set up here after the hearing was closed, and some exhibits filed or sought to be filed by West Virginia, asserting the fact just now stated by Judge Holt.

Mr. Harrison: Even if there was a branch at Tazewell County, that would not affect the disposition of the stock of the bank.

Mr. Holt: Certainly not, but we are trying to ascertain now the value of that stock. Then any portion of it that West Virginia got of course would be deducted from the sum total.

Mr. Harrison: That value has been once definitely ascertained, the value of the stock of the Northwestern Bank. If there is to be any amendment now it would be to increase the charge against West Virginia by charging her with 326 shares that were omitted before, after the value ascertained by the Master.

Mr. Lilly: The value ascertained by the Master was solely on the basis of dividends, and now we show the dividends and we show the financial standing of the bank.

Mr. Harrison: You can impeach the report of the Master as much as you please; I am merely showing what the report was.

Mr. Lilly: We are willing to take that as the financial basis of valuing stock of all the banks.

Q. In spite of the findings of the Master, as called to your attention again, and with which you say you are familiar, that 3,418 shares of the stock of the Northwestern Bank had been charged to West Virginia, and in spite of the admission

of the defendant in her supplemental answer that she should be charged with $210,200 of the value of said stock, you have charged Virginia with the ascertained book value of all of the stock of the bank, including bonus, have you not?

A. Yes, sir, leaving the settlement of how much was returned to Virginia as an after consideration.

By Mr. Lilly:

Q. To West Virginia?

A. To West Virginia as an after consideration.

By The Master:

Q. How much was received by West Virginia and for which she should be charged, that is what you mean?

A. Yes, sir, I will amend my answer that way.

Mr. Holt: Now that is the state of his exhibit, and it speaks for itself.

The Master: Then any controversy about the foundation for any of these conclusions as to which you do not agree I will hear you on later and determine.

By Mr. Harrison:

Q. Now instead of crediting Virginia by the value of the Northwestern Bank stock you have charged her with it and included it in $4,060,487.02, have you not, carried into your summary?

A. Yes, sir, I have carried it into the summary of $4,060,487.02.

Q. Now if that is taken out it will have to be taken out twice, won't it? If it is an improper charge it will have to come out, won't it?

A. Yes, sir.

Q. And if it ought to be charged to West Virginia you would have to take it off again, wouldn't you?

A. No, sir.

Q. If it was charged instead of being credited, won't you have to take it off twice?

A. No, sir, it is included in the items for which Virginia has got to account to West Virginia, supposing it of course to be of value, and in accounting to West Virginia they are allowed a credit of the full amount of the stock, but the charge should be for mutual consideration as to the cost of that stock before the full credit is allowed.

Q. Now you have charged this item to Virginia, have you not?

A. Yes, sir.

Q. If it is an erroneous charge it ought to come out, ought it not?

A. It is afterwards to be taken out for whatever it is worth.

Q. Now if it turns out to be an erroneous charge it will have to come out, if it also turns out that Virginia is entitled to be credited with it you will have to take it out again, won't you?

A. No, sir.

Q. Are you quite sure of that?

A. Yes, quite postive.

The Master: Then watch his question, and when you answer it don't spend any time as to the effect of the answer upon the results of the case, but just notice what his question is and answer the question. I am afraid you have not got just the full purport of the question. It is not up to you what the consequences of the question are, but just get the question that he asks you. And whether it is a proper question or whether it is predicated upon anything that exists is not up to you. I am afraid you may have gotten a little bit confused on that.

The Witness: No, sir, I think that is a correct answer.

Q. I will try you again. I find in the summary of $4,060,487.02 you have charged an item of $405,849.60 against Virginia—

Mr. Holt: That is to the joint account of Virginia and West Virginia.

Mr. Harrison: Now Judge, I do not know what you are talking about when you are talking about the joint account. I am dealing with the witness' summary.

Mr. Holt: Well, I have described it accurately.

The Master: Your assistance does not seem to be appreciated, Judge.

Mr. Holt: It does not.

Mr. Harrison: I would like to see if the witness and I cannot have a chance to understand each other about the idea.

The Master: That you shall have.

Q. I will begin again. You have charged in your summary of charges against the State of Virginia an item of $4,060,487.02. Am I right about that?

A. Yes, sir.

Q. Included in that item is a charge against Virginia of $405,849.60 on account of the Northwestern Bank, is there not?

A. Yes, sir, I understanding of course that this is a charge against Virginia items for amounts which are afterwards to be prorated. It is not a direct charge against Virginia of that amount.

Q. Now I say if you have charged that item improperly, if it was an erroneous charge, it ought to go out, ought it not?

A. Yes, sir, if it is an erroneous charge.

Q. And if you took it out what would be the balance left?

A. $3,654,638.22.

Q. Now if, instead of charging it as has been erroneously done, you credit Virginia with it, what would be the amount left?

A. If I make a duplicate charge against West Virginia for it, I would then have to make a further deduction from the $3,654,638.22.

The Master: Now that is exactly the legal purport of the question that Mr. Harrison put to you about ten minutes ago, and if you had watched him carefully you would have answered him in the same way then. You had in mind that it was a different proposition. We would have been just that much farther along. That is why I suggested that you pay a little more careful attention to what he says. You ignored the idea of crediting it. Of course you have landed in the same place now.

The Witness: I think, your Honor, when you come to study the case you will find that my answer covers the case exactly.

The Master: You are not to blame perhaps for being somewhat confused about it, but you would have landed just where you have now landed.

The Witness: Your Honor, I think when you analyze what I have just now said and what I said five minute ago that they coincide exactly.

The Master: Well, there is no harm done anyway.

Q. Now we will take up the next bank in order, Exhibit No. 5, page 55, Fairmount Bank. What do you show to be the total number of shares owned by the State of Virginia in that bank?

A. 500 shares, par $100, total $50,000.

Q. Are you not mistaken in respect to the number of shares and the par?

A. I think not. I have looked over the accounts and I see nothing on the books which would indicate whether it was 1,000 shares at $50 each or 500 shares at $100 each.

Q. It appears from the original record in the case, paragraph 7 of the Decree, page 820-K, the same page that we examined in connection with the Northwestern Bank, that the total amount of shares held by the State in the Fairmount Bank was 1,000, and that the par value of the stock was $50 a share, or $50,000.

Mr. Lilly: Does it appear where that was taken from?

Mr. Harrison: That is an agreed schedule between the two accountants, and the evidence does not show that fact. I did have the page a while ago but I have lost it, and I do not want to take the time to hunt it up again; but that is the fact.

Mr. Holt: The total capital is $50,000.

Mr. Harrison: The total capital is correctly stated, but the schedule is incorrect as to the par and the number of shares.

Q. Now what value do you put upon that stock?

A. $103.87 for every $100 worth of stock.

Q. And do you give it the same value in 1863?

A. Yes, sir, I do.

Q. Have you charged the value of that stock to the State of Virginia?

A. I have charged that value upon my summary.

Q. Upon your summary of what?

A. Of the amounts which should be taken into consideration in determining the amount due from Virginia to West Virginia. In that sense I have charged it to Virginia.

Q. Why did you charge it in any sense to Virginia, in view of the concession of the defendant in her supplemental answer that that should be charged to West Virginia?

A. For the same reason as mentioned in regard to the previous stock, that whatever credits were due should be or would be taken up as an after consideration and not at this point. At this time the stock had not been turned over to West Virginia.

Q. Now if it is charged to Virginia and you merely give her credit for it she would not be getting any value, would she? She would not be getting the benefit? She ought not to be charged with it at all, ought she, if it is properly chargeable to West Virginia?

A. I am charging to joint account, I say, and leaving the credits afterwards to take care of themselves.

Mr. Holt: Your Honor, will you permit me to make a little statement right there, because I do not want any confusion of our theory. I think Mr. Harrison has our theory on that. We are trying now to ascertain the total value of the common assets as of 1861, we will say. The banks are included. When we get that total value, 76½ per cent. thereof Virginia is entitled to, and we are entitled according to our contention to the remaining 23½ per cent. But we have to get the total value of the joint assets. Then of that we first take 23½ per cent. to find West Virginia's part and when we find that, if it should be subsequently discovered that any part of that has been heretofore paid over to her, as in the case of the banks across the mountains, why it would be deducted from

that 23½ per cent. of ours. You would not be charging up and deducting in one place the whole joint asset in another.

Mr. Harrison: Your Honor will perceive the fallacy of the statement of Judge Holt, coming here and selecting from a number of investments made by the original State of Virginia certain of those investments which it is said West Virginia is entitled to participate in, to have a percentage of those investments assigned to her. Would it be proper to include in that list an investment that West Virginia had gotten the entire benefit of and has gone with, and which it is conceded Virginia had no share in whatsoever? That is the point, and there is the fallacy of the Judge's statement—of his position I mean, when he speaks of having a joint account which is to be divided according to a percentage, to go to one side or the other. The theory of the supplemental answer is that they have discovered something, that they have discovered a certain number of named investments which it is said Virginia failed to account for and which West Virginia is entitled to a certain share of. Well, surely, if that is true it would not be right to include in that list an investment that West Virginia got the entire benefit of. You could not hold Virginia accountable for somethng that West Virginia has had the entire benefit of, incorporate that in the list and say you will give West Virginia another share of it. Therefore, when we tried this case before there was no difficulty of course in eliminating those particular assets that it was conceded on all hands West Virginia had gotten. She was chargeable with those. Now here, take the Northwestern Bank and the Fairmount Bank, the Fairmount Bank about which there is no dispute, no difference of opinion, that West Virginia reaped the benefit of that entirely, and not one copper of benefit accrued to Virginia; my point is that it has no place in any column of figures that purports to embrace items for which Virginia is liable, and for which West Virginia is entitled to a percentage of. We are

not dealing with any joint account that would bring about such a result as that.

The Master: I think I understand the contention of the parties.

Mr. Conrad: As a recent distinguished citizen said, this is a condition and not a theory. You ascertained it in your former report; it is *res adjudicata,* that it was exclusively the property of West Virginia and that Virginia had no right to participate in it at all. I have been somewhat at sea at some observations that have fallen from you as to what the extent of this previous record is. It may not be out of place for me to express my doubt. I apprehend that your Honor proposes to efface the entire record. I challenge your right to do that. This is the record of the Supreme Court of the United States. The decree under which we are assembled here now does not efface this at all. This comes in under a supplemental answer, and these are supplemental proceedings to what has occurred. I have heard you several times, if I understood you correctly, speaking of having to prove something that was in this record, and God forbid; that is fixed by the decree of the court. The court has confirmed the report which you made on that record. I do not consider the decree under which we are now meeting here as in any degree or to any extent setting aside the decree confirming your report. That decree of confirmation stands. The court says that nothing in this decree shall be construed as affecting in any way its previous determination in this case. Now, you have decided and the court has confirmed your finding that this particular item here of $50,000 of stock in the Fairmount Bank is exclusively, absolutely the property of West Virginia.

Mr. Lilly: May I ask you a question. In the ultimate determination of the case did the Northwestern Bank or the Fairmount Bank computation enter into it whatever?

Mr. Conrad: My Lord, yes. You will find in the report of the Master, confirmed by the court, that the Fairmount Bank's

asset of $50,000 was conceded and admitted and adjudicated to be exclusively the property of West Virginia, and therefore all this matter about undertaking to ascertain the distributive or contributive share of Virginia in the matter is absurd logically, not personally.

Mr. Holt: Your Honor, just one word. I think we are speaking somewhat at cross purposes.

The Master: I do not think that any of this discussion is going to be productive of any advantageous result. It is all anticipating what comes later. And I may say here that I do not understand that the finding of the court in the previous case as to the Fairmount Bank in the slightest degree militates against the contention now relied upon by West Virginia; I do not think it affects it in the slightest. I will not go over it in detail, but I think I understand the situation. The only question here now is what we want in here as evidence. I will admit anything that either of you have to offer upon this item. As to the effect to be given to it, I will hear you all later. Of course the suggestion of Judge Holt or as to their theory and contention was perfectly answered by Mr. Harrison from the standpoint of Virginia; but neither of those contentions concern me right now. We are taking up the evidence and we want the evidence in, and later I will hear you all as to the effect of this evidence. There has not been a thing said on one side or the other that affects the admissibility of anything either of you want to prove in respect to this item. Mr. Harrison's cross-examination is a perfectly proper cross-examination on the schedules made by Mr. Hillman, and it is perfectly proper for him to show how Mr. Hillman understands them and how he understands them. I have succeeded in being misunderstood as to this original record. I have never intended to say that the original record was not a valid record and part of the record in this case, but what I have tried to say two or three times and what I am trying to have done is this, that when I make up my record to go to the court it will include

not only what is testified to here, but will include all of the original record that either party relies upon in connection with the contentions here, so that when the Supreme Court takes this case up and passes on it and when I take it up and pass on it I will have one record made up of the testimony in this case and all that has been introduced before so far as either of you think what has been introduced before tends to illuminate the situation here. Do I make that clear? That does not preclude the court and does not eliminate the original record, but my idea was, whatever either side relied on as a part of this original record as being legitimately probative of any fact that is pending before me here, I want them to point it out to me so that I will look those things up in the original record without going over the whole record myself, and then I wanted it pointed out to the other side so that if the other side wanted to take anything from the original record that tends to explain the matter relied upon by Virginia they will have an opportunity to do that. Of course I have no doubt but that the two records might perhaps be properly termed the legal record in this case; but we are all practical people. The Supreme Court expects me to put this case up in as concrete and concise shape as can be, and that is what I am hoping to do. Of course I am not going to make up a record here that anybody objects to. If the counsel for Virginia when they come to make up this record insist that the whole of the original record goes up as part of my record, I will put it in; or if the counsel for West Virginia insist on that, I will put it in, but the object of that suggestion was and my opinion is that it is going to be better for all concerned if we take the record we make here and then make a part of that as much of the original record as either side may think is pertinent and proper. Do I make myself clear, Mr. Conrad?

Mr. Conrad: Perfectly clear, but I do not agree with you. Pardon me. I represent in this case—

The Master : I do not propose to give this as a direction

that is going to foreclose anybody. If Mr. Conrad feels that all ought to go in, it will go in.

Mr. Conrad: It is not what is going in, but what I think ought to be kept out. I represent here the people who are paying for all of this. They have paid now nearly three hundred thousand dollars of money, and the case has not yet been decided. I want to keep down every dollar of expense that is possible to do and you talk about reprinting this record that has already cost thousands of dollars, the stenographic report of which cost over ten thousand dollars.

The Master: Eight thousand dollars.

Mr. Conrad: Ten thousand dollars I am told.

The Master: About eight thousand. It cost enough anyway.

Mr. Conrad: That is enough. I am absolutely opposed to requiring us to reprint anything that is in that book. You have spoken once or twice of not having two records for the Supreme Court. This is all one record. It may be in a dozen volumes. I have a case in the Supreme Court with fifteen distinct volumes in it. Volumes do not make any difference to the court at all. This record must remain intact. It is a record of the Supreme Court of the United States.

The Master: It can all be stipulated.

Mr. Conrad: You cannot strike any part of it out.

The Master: I do not propose to.

Mr. Conrad: If there is any conflict in this case between the record previously made and the record which is made here, if they should come in conflict, I should feel at perfect liberty, either myself or vicariously to call the attention of the Supreme Court to that fact. What has aroused me here, perhaps indiscretely, certainly for my own physical comfort, is the suggestion, the intimation, that whatever is in this record has got to be reprinted and called to the attention of these gentlemen. Why, God forbid that we should say that this is not West Virginia, the same West Virginia, that led to this intolerably

lengthy record. They are not people who are coming in here now who have not been parties or privies to this matter here before. They are affected by everything in the record, bound by everything in the record. Why should we even call their attention to anything in it? It is their record as well as ours. And now we talk about printing the bill, the demurrer, the answers, already printed. No, I protest against that; I protest against anything being reprinted that is in the record, Let it be referred to in this record by reference.

The Master: As far as I am concerned I do not care whether it is or not.

Mr. Conrad: I speak for the people who have to pay the money for this—

The Master: We will not have any difficulty about it. In the first place, you have not got to print anything from the original record that you want to refer to.

Mr. Conrad: There is a great deal in it that we want to refer to.

The Master: I do not suppose anybody will have any objection to calling my attention to what they rely on in the original record.

Mr. Conrad: This very stipulation that was proposed here this morning covers over one hundred pages, seventy-five or one hundred pages.

The Master: It can all be stipulated.

Mr. Conrad: I won't stipulate anything.

The Master: Very well, I cannot require you to.

Mr. Holt: The stipulation involves even more than the one hundred pages, because the record of the Board of Public Works is not in Exhibit No. 1; there is the difficulty; and we have been compelled to supplement that exhibit with long-winded oral testimony. I do not misunderstand the suggestion of the Master at all. The suggestion is along the line of convenience, to have a complete record, either side to have the privilege of calling to the attention of the Master such portions of the old record as may be relied upon. Of course we are not trying to destroy the record of the Supreme Court as it

stands, but as a matter of fact there has never been a decree in this case excepting the decree of reference.

The Master: I do not think we need have any misapprehension or any trouble. I understand the significance of Mr. Conrad's suggestion and I sympathize entirely with him; as far as he is concerned I do not blame him for having more or less disturbance and annonyance about the expense and the delay. The expense has been large and the delay has been great; and consistently with other things, as far as I am concerned, I propose to consult his wishes and his convenience as well as that of the other counsel in the case. I do not think we will have the slightest trouble in giving a direction as to what may be done in that regard that will be agreeable to all concerned, and certainly as far as I am concerned I shall do my level best to keep the thing within the narrowest possible limits on the line of expense. I can understand perfectly well exactly how Mr. Conrad feels about it, and it is perfectly justifiable from his point of view. I am sorry he has got the impression, at least I did not intend for him to get the impression that I thought the original record was not the record, because it is all a part of the record. I do not think we will have any difficulty about that, and especially if you are able to come to some understanding in relation to the matters suggested in connection with this stipulation.

By Mr. Harrison:

Q. What is the total amount that you have charged in your summary on account of these figures for the year 1861 and June 20, 1863?

A. $51,935.

Q. No, I intended to say for all of the banks, the total.

A. $4,060,487.82.

Q. Now, what have you charged for June 20, 1863?

A. The same amount, $4,060,487.82.

Q. Do I understand you to say that you intend to give the same explanation of your charge of the Fairmount stock in your summary against Virginia that you give in the case of the Northwestern Bank stock?

A. Yes, sir.

(Adjourned to September 8, 1914, at 10 A. M.)

BEFORE THE MASTER.

Richmond, Va., September 8, 1914.

Present, the same counsel as on yesterday.

The Master: We have the first proof of the work that is now being done by the printer laid on our desks this morning, and I would like to call the attention of the counsel on either side to it so that they can at the earliest moment examine it, so that when the time comes we can have the necessary copies struck off and this type distributed. I hope you will be prepared to give us some suggestions on that line tomorrow morning.

Continuation of the Cross-examination of

CONWAY W. HILLMAN.

By the Master:

Q. Now Mr. Hillman, just read me what you have in relation to the demonstration as to the question of whether or not the items of profits of the institution does or does not include the whole profits. I want to see just what you have on that line. Read it right into the record.

The Master: And then after that we will have the statement from Judge Holt, and Mr. Harrison will go on with his cross-examination.

A. Farmer's Bank of Virginia, one of the specimen banks, January 1, 1859—

Mr. Holt: Haven't you given us the Bank of Virginia?

The Witness: No.

The Master: I told him he could give us any one by way of illustration.

Q. You have prepared a detailed computation relating to the Farmer's Bank of Virginia and the Exchange Bank of Virginia. which in your judgment demonsrates this proposition?

A. Yes.

The Master: Now we will put that right into the record; I won't stop to have it read, and I will look it over, and if I want anything further I will examine further about it, and either of you gentlemen, if you want anything further, may examine about it. But at this time I won't take time to examine further about it. You may put it right into the record. Is that agreeable?

Mr. Lilly: Yes, sir.

The Master: As far as I am concerned I would be very much better qualified to examine about it after I had looked it over. That may go right into the record as part of your statement.

The Witness: The statement is as follows: Statement showing that "Profits of Institution" is not the total annual profit of Banks as shown by Document No. 14, and that it is a "running account" only.

FARMER'S BANK OF VIRGINIA.

January 1, 1859. Page 24, Document 14.

Had surplus and contingent fund of	$ 343,477.53
And profits of the institution,	166,695.72
Total available for dividends	510,173.25
In 1859 dividends were declared for	236,317.50
being 7½ per cent. on $3,150,900.00 Capital, which, if taken out of the above would leave a balance of	$ 273,855.75

Instead of this the bank showed on January 1, 1860, Page 24, Document 14	
Surplus and Contingent	$ 331,040.09
Profits of the Institution	145,813.47
	$ 476,853.56

Which proves conclusively that the amount of $166,695.72 WAS NOT the entire earnings.

Advance now to the next year, January 1, 1860, Page 24, Document 14.

Surplus and Contingent Fund was	$ 331,040.09
Profits of the Institution	145,813.47
	$ 476,853.56

Dividends for 1860, 7¼ per cent. on $3,150,900.00	$ 228,440.25
Which would leave a balance of	248,413.31
Instead of this the bank showed January 1, 1861, Pages 14 and 15, Document 14	
Surplus and Contingent	$ 337,067.05
Profits of the Institution	138,101.18
Or	$ 475,168.23

Which proves conclusively that $145,813.47 was NOT the entire earnings. Therefore, we can confidently state that $138,101.18 was not the total earnings for year ending January 1, 1861.

EXCHANGE BANK OF VIRGINIA.

December 31, 1858, Page 46, Document 14, shows in this bank

"Excess of Surplus and Assets" Dec. 31, 1858	$ 391,955.50
"Excess of Surplus and Assets" Dec. 31, 1859	$ 359,632.71

This latter item is on page 28, 1861, statement, divided as follows:

Contingent Fund	$ 205,047.67
Profits of the Institution	154,585.04
	$ 359,632.71

Thus surely indicating the "identity" of Contingent Funds with surplus and profits as contended for by Mr. Hillman. It also indicated the correctness of the following:

Exchange Bank of Virginia and Branches, December 31, 1859, Pages 46 and 47, Document 14.

Excess of Assets, or Surplus—

Contingent Fund	$ 205,047.67
Profits of the Institution	$ 154,585.04
Total	$ 359,532.71

Then was declared a dividend in 1859 of 9 per cent. on $3,048,600.00 Capital Stock or $ 274,374.00

Leaving a balance of $ 285,158.71

Instead of this, the bank showed on December 31, 1860—

Contingent Fund	$ 191,584.24
Profits of the Institution	$ 150,586.05
Total	$ 342,170.29

Proving conclusively that $154,585.04 was NOT the entire earnings.

The Master: Judge Holt, if you are prepared with your statement in a general way as to what the State of West Virginia expects to show further in chief, I would be very glad to have you make it.

Mr. Holt: We expect, your Honor, when the examination and the cross-examination and the re-direct examination of Mr. Hillman shall have been completed, to take up first the Acts of the Legislature of the State of Virginia authorizing the purchase of all these stocks in question as well as the issuance of bonds thereunder. Now, we may do that by taking the Acts themselves or by taking such portions of Plaintiff's Exhibit No. 1, in the original record which gives a synopsis of these Acts as we will desire, and may probably undertake to supplement that with certain journal entries of the Board of Public Works showing the expenditures of the money under those Acts.

The Master: That for the purpose of showing that the loan is the source of the assets that you claim?

Mr. Holt: Yes, sir.

The Master: And that will be done unless you are able between you to agree on some short statement covering the record.

Mr. Holt: Of course a stipulation along that line as indicate by us yesterday would relieve us from that necessity.

The Master: Meanwhile counsel have an opportunity to get together and see what they can agree on so as to save time and space in the record.

Mr. Holt: Next after that we expect to introduce two Acts of the Legislature of Virginia, I don't recall their date just now, requiring all these railway and bank companies to make annual reports to the Governor of the Commonwealth of Virginia, and it is these reports from which we have been making up these schedules, that were directed to be made by the Acts.

The Master: That can all be taken care of by a short stipulation in the record, that all of these reports were made by authority and under requirement of the law. What you want to show is that these were official in their character, and I suggest to the other side that they have in mind that question. There is no occasion for that legislation going into the record if its effect can be stipulated in two or three lines; that is, if it is true that these reports have all been made by virtue of provisions of law, which is what you want to show, that can be stipulated and take care of that whole question.

Mr. Anderson: They are not official reports made by State officers.

The Master: They want to show that the Laws of Virginia required them to make the reports, and they want that legislation in as tending to give an official character to the information. That of course they are entitled to, and if what they state is correct there is not reason why it should not be stipulated.

Mr. Holt: In other words, there is no contention that these reports are made by State officials but they are made by railway and bank officials under the requirements of the State statutes.

The Master: Precisely.

Mr. Holt: Afterwards we will undertake to introduce the Acts of Virginia relating to the establishment, regulation and conduct of the Sinking Fund, and in that connection will introduce the Constitution of the State for the purpose of showing that these assets that we are dealing with were intended for the payment of the debt upon which we have been sued. In addition to that,

we will introduce the Acts of the Legislature upon the subject of refunding this debt. The only bearing that that could possibl have, I take it in this inquiry, would be upon the subject of interest, and and whether the question of interest should be considered pertinent before your Honor or not, still if those Acts were in the record they could be utilized by us, and we expect to introduce them.

Mr. Anderson: Which Acts are those, Judge, since the war?

Mr. Holt: Yes, sir.

Mr. Anderson: They are all in the record now; they are exhibited and printed with the bill.

Mr. Holt: I presume that some of them, if not all of them, are in there; but we should want to bring forward into the present record either the Act itself, for the purpose of convenience, or a synopsis of it or such sections of it as we would want to rely on. That is a question of convenience more than anything else.

Mr. Anderson: There have been at least two reprints of that already besides the original bill.

Mr. Holt: We likewise expect to introduce certain auditors' reports of the State of Virginia bearing upon the condition, amount and value of these assets, and likewise one or more reports of the Chief Executive of the State bearing upon the same subject. We will also perhaps introduce a map taken from the records of the State of Virginia, showing the situation with respect to all these railroads. It is a photograph of the thing that enables us to understand what was going on from a geographical standpoint better than anything else. It is for purposes of illustration more than anything else. Then there are certain exhibits that were filed with our answer that have not been proven as yet that we will prove by oral testimony as well as by the offer of the exhibits. Upon the subject of market quotations, we do not expect to offer any. We understand from the gentlemen upon the other side that they intend to do that and we will rely upon that statement, because in fact we have, in consequence of the discussion here yesterday and the day before, as I understand it, stopped our investigation along that line except for the purpose of testing the accuracy of those furnished by them.

In a general way, your Honor, this will complete our case.

The Master: Now, this is very largely documentary in its character and is not susceptible of much if any oral testimony,

so that I do not see that will take very much time, as far as the plaintiff is concerned, to meet a very large proportion of what is now proposed to be put in by West Virginia, so that relieves the plaintiffs apparently of what might perhaps be more or less embarrassment in that respect in the line of preparation. So that the only controversy that can be possibly pending here of course is as to the value of these various items that are referred to. And as to those I assume that both sides have been in a state of substantial preparation for at any rate the time since the beginning of this hearing. So that I cannot see any reason why we cannot go on without any delay. Now, Mr. Harrison, you may proceed with your cross-examination. From now on in the interests of progress, where upon the part of either side the examinations are going to involve details and computations, so far feasible I want notice given in advance so that the accountants on either side may have these computations practically made, and bring them in so that they may testify to them without delay. I do not think it is proper for me to drag this case along by having the accountant sit here before me and make a lot of detailed computations. But I am not intimating that they are not proper computations and ought not to be made, but what I mean, is, so far as possible, if we have anything of that sort from now on I want either side to be prepared with the detailed computation, so that the accountant can testify right along without these interminable delays. The accountants are doing the best they can, but I cannot wait for the witness on the stand to make the computations, provided it is feasible to have them made outside and brought in so that they may be readily testified to upon either the direct or cross-examination. If we could have anticipated, we could have saved pretty nearly forty per cent. of our time yesterday and the day before by having a lot of these computations made in advance and all ready to be testified to as the examination was going on. Of course I do not mean by that to foreclose either side from testing the accuracy or the judgment or the intelligence of any witness by requiring him to make computations on cross-examination on the spot. You get my point, Brother Harrison?

Mr. Harrison: Yes.

The Master I know how that may be, sometimes it is important to have a computation made. Of course both sides may feel

entirely free to go into that branch of the subject as far as they see fit. I do not intend for a minute to restrain anybody from any proper legitimate test on cross-examination, only to make progress. Now, then, Mr. Harrison, if you are ready.

Mr. Harrison: In respect to the exhibit which has just been offered this morning, we have not yet had an opportunity to examine it, but we reserve the right to cross-examine the witness in respect to it after we have had an opportunity to analyze it.

The Master: Certainly, that is the understanding.

By Mr. Harrison:

Q. You have testified, I think, that you did not pursue your inquiry in respect to the ownership of the State in the stock of the several banks which are under investigation in order to see what disposition the State made of these stocks. Am I right about that?

A. Yes, sir.

Q. Why didn't you do it as you did in the case of the stock and bonds of the railroad companies which the State owned?

A. For the reason that I had no method of determining what had become of them. There is nothing to show on the books of Virginia what became of them, and so far as I could learn there was nothing elsewhere; and I did not pursue any further investigation.

Q. You mean that the records of the State are silent as to the disposition which Virginia made of the stock which she held in these banks?

A. Yes, sir, I think they are.

By the Master:

Q. Were you instructed to make such investigation?

A. No, sir, I was not.

By Mr. Harrison:

Q. Did you examine Journal D of the Board of Public Works to see whether any entry was there made to close these accounts?

A. No, sir; I do not think that I did examine it for that purpose.

Q. By reference to Journal D of the Board of Public Works, under date of September 30, 1872, I find the following entry with

reference to these stocks: "To balance latter account, same having been lost at the close of the war in 1865," and those bank stock accounts were closed with that entry.

Mr. Holt: Your Honor, we object to that mode of examination. That is not cross-examination. Here is a witness who is not requested to trace these bank stocks beyond their value in 1863, is not requested to investigate their final disposition, no allegation upon that subject in the answer, he has never opened his mouth upon the subject in his examination in chief, and this is in chief upon the part of the gentlemen upon the other side. We do not believe that it should be lugged in here as a part of the cross-examination. If they want to introduce record evvidence showing the final and ultimate loss, and the date thereof, of these bank stocks, that is part of their case and it is not a part of the cross-examination.

Mr. Harrison: It may go in as a part of our case, whether it is strictly speaking cross-examination or not.

Mr. Holt: That is not the way to do it.

The Master: I do not suppose as a matter of fact that Virginia can establish as a matter of proof by a cross-examination of this character the existence of these facts. That will have to be done undoubtedly in another way. Now, just exactly what use Mr. Harrison intends to make of this question on the cross-examination, I do not yet quite know, because he has not finished his question. It might be necessary—of course I should give pretty broad latitude on cross-examination—but it may be distinctly understood that I do not understand that a reference to a public document or a reference to a fact in this manner is proof of that fact. If the plaintiffs rely upon it they will have to establish it in some other way. They cannot establish it by putting it into a question on cross-examination. But I cannot anticipate just what Mr. Harrison may have in his mind as to the cross-examination, and if it has any reasonable legitimate tendency bearing upon the accuracy of Mr. Hillman's testimony, I will rule upon that when we get the question. If you will just put the whole question, bearing in mind that the fact cannot be proved by a question in that manner, and that it will be admissible only so far as it tends to illustrate what Mr. Hillman has already testified to, I do not go quite so far as to say that I shall not allow cross-examination

upon some fact that may have been specifically testified to by Mr. Hillman, because I do not know what the rule may be here, but I do not think as a matter of fact it is of any great consequence whether we rely with great strictness on the rule. It won't make a great deal of difference to me whether it comes from Mr. Hillman on the direct-examination or cross-examination. The legal rule of course I will apply. And strictly speaking, if the United States rule applies here, Mr. Hillman cannot be cross-examined on any subject as to which he has not been examined on the direct.

Mr. Anderson: If we go beyond that we make him our witness.

The Master: That technical proposition is of very little consequence in this hearing.

Mr. Harrison: I thought so.

The Master: It will make very little difference to me whether it comes on the cross or whether it is strictly speaking in chief on the part of Virginia. Judge Holt's main criticism I think is true. I do not know that Mr. Harrison was expecting to establish as a matter of evidence the existence of this record by the questions he puts in his cross-examination.

Q. Did you find that entry on Journal D of the Board of Public Works?

A. No, sir, I did not.

Q. Did you look for it? Did you examine with reference to informing yourself in respect to that matter?

A. No, sir, I did not.

Q. Now, my question is, and I will repeat it, why did you not do it in the case of the banks as well as you did in the case of the State's holdings in the various railroad companies about which you testified? In other words, if you deemed it of importance to pursue that investigation in respect to the railroads why did you not likewise deem it of importance to pursue it in respect to the State's holdings in the banks?

A. The principal reason was because in the supplemental answer there was nothing mentioned as to what the final disposal of those bank securities was, and for that reason I did not follow it.

The Master: Does the supplemental answer refer to the disposition of the railroad stocks?

Mr. Holt: Yes, sir.

By the Master:

Q. Did you have any instructions from the counsel for West Virginia with reference to either class of securities?

A. No, sir.

Q. I mean as to this specific point, as to how far would you pursue your investigation, that is, did they instruct you to look up the matter of the disposition of the railroad stocks?

A. Yes, sir; to confirm as far as possible and get the absolute facts of the several allegations in their supplemental answer, those were the instructions.

Mr. Holt: That answer alleges, your Honor, what became of the railroad stocks, but not what became of the bank stocks. Of course his instructions were based on that answer. I do not believe there will be very much objection if they want to stipulate on that subject to show that th ebanks in the later's 60's went to pieces.

The Master: I do not know what Virginia may desire to introduce on that score, but this is a proper cross-examination and there is no objection made to it as I understand. It is competent for them to develop the circumstances under which the investigation was made.

Mr.Harrison: We intend also to introduce the annual report of the Auditor of Public Accounts for September 30, 1866, showing the State's holdings in these banks were a total loss in consequence of the war.

Mr. Holt: Now, your Honor, upon that proposition, is not that going to derange all the exhibits for them to inject into a cross-examination their part of the case?

The Master: It is not introduced. Mr. Harrison is only indicating what he proposes to do. It does not prove anything or produce any result. I do not understand that you offer it now, Mr. Harrison. It is simply the suggestion that when they get into their side of the case it is their purpose to introduce that report. Is that what you mean, Mr. Harrison.

Mr. Harrison: Yes, sir. I did not suppose that it was worth while for us to be constrained by any rigid rules of evidence in this investigation, but for the purpose of saving time I assumed there would be no objection to putting in these records at this point in order that we might save time and go on; but if the gentlemen would prefer to have it put in later, we will do it.

Mr. Holt: I have only one idea in the world and that is that we should get in the bound printed volumes, your side of the case running consecutively along and not inject it here and there. That was a question of convenience. Of course there is no real substantial objection outside of that.

The Master: I did not get the full purport of Mr. Harrison's suggestion. I did not get the idea that he was offering it now, but the impression left on my mind was that it was simply something that he proposed to offer. Do I understand that you are offering it now, Mr. Harrison?

Mr. Harrison: I say I will not do it now if the gentlemen prefer that we do not.

By Mr. Harrison:

Q. I ask you if you examined the Auditor's report, the Auditor of Public Accounts of the State of Virginia, of September 30, 1866, in connection with your investigations in this case.

A. No, sir, I did not.

Q. I call your attention to Defendant's Exhibit No. 6, page 56 of the printed exhibits, the caption of which is sale of various stocks and loans to the Atlantic, Mississippi & Ohio Railroad. What is the total of the items embraced in your Exhibit No. 6, Class F, page 56 of the printed record?

A. $4,689,436.41.

Q. There are two items in that list of stocks and loans embraced in the sale to the Atlantic, Mississippi & Ohio Railroad Company which are not extended, namely, the claim of the State on account of a loan of $800,000, due by the South Side Railroad Company—

The Master: That is No. 4?

Mr. Harrison: Yes, sir.

Q. —and all of the State's claim to a loan of $1,000,000 made

to the Virginia & Tennessee Railroad Company. If those two items are extended, your total will be what?

The Master: That last is No. 6?

Mr. Harrison: Yes, sir.

A. $6,489,436.41.

Q. What amount of the items embraced in this exhibit is charged in your summary against Virginia under Class F?

A. There are none of the items on this exhibit charged against the joint account of Virginia and West Virginia from this exhibit. If your question calls for it or desires it I will state what items are finally carried into that total and from what exhibits. Is that your desire, Mr. Harrison?

Q. My question was, what is the total charged under Class F in your summary against Virginia.

A. $4,276,044.39.

Q. What amount of the items in this same exhibit, page 56, are charged in your summary against Virginia under Class C?

A. $1,023.685, as shown on page 13 of the printed record.

Q. Didn't you testify that the South Side Railroad loan of $800,000 should be included under Class C as a charge against Virginia?

A. Yes, sir.

Q. Why then don't you include it now?

A. For the reason that we have not yet filed our exhibit amending page 13 to show these amounts or what you might call the corrected or amended exhibit, and I am quoting only from page 13, as the totals are shown there.

Q. But you intend to add the $800,000 as a proper charge under Class C, don't you?

A. Yes, sir.

Q. Then what will be the result with that added?

A. $2,100,000.

The Master: Why cannot we have that corrected schedule to-morrow morning or to-day noon? You ought to have it for convenience of cross-examination, Mr. Harrison.

The Witness: That is all ready.

The Master: Then hand it to the other side right now so that they can have it for cross-examination, because it is involved right here at this point. You would like to have it, wouldn't you,

Mr. Harrison?

Mr. Harrison: Yes, sir.

By Mr. Harrison:

Q. Before you added the $800,000. South Side loan didn't you testify that the total was $1,023,685.00?

A. Yes, sir.

Q. Then if you add $800,000 to that what will it make?

A. If I add $800,000 to that it would make $1,823,685; but on the amended exhibit or the corrected one there would be $163,000 further added to that on account of the Norfolk & Petersburg loan, and $113,315 on account of the Virginia & Tennessee loan, which would bring the total up to $2,100,000.

By the Master:

Q. You have got that corrected exhibit right there, have you not?

A. Yes, sir.

Q. Just hand Mr. Harrison a copy of it and hand me a copy of it, so that I can follow right along.

A. Yes, sir.

By Mr. Harrison:

Q. Now I will ask you again, in order that we may have it before us, what is the total of the items in this same exhibit that we are examining, which you have charged in your summary against Virginia under Class C, of the items embraced in the exhibit found on page 56 of the printed exhibits.

A. $2,100,000 on the amended page 13, is in process of preparation.

Q. Then of the items embraced in this exhibit, page 56 of the printed record, which Virginia transferred to the Atlantic, Mississippi & Ohio Railway Company, you charge Virginia with a total of $6,376,044.39, do you not?

The Master: That is taking into account both schedules?

Mr. Harrison: Yes.

The Master: That simply involves adding the item of $4,000,000 to $2,000,000.

Mr. Harrison: That is all.

The Master: That is a computation that can be made in about a second. Add your four million to the balance of $2,100,000, and answer the question.

The witness: Your Honor, the question was that I should make it $6,376,044.39.

Mr. Harrison: I may have given you the wrong addition.

The Master: The answer to that question is so obvious that it is hardly worth discussing.

The Witness: No, sir; I do not charge it.

Q. Didn't you just testify that of the items embraced in this Atlantic, Mississippi & Ohio schedule you had charged to Virginia $4,256,044.39 in your summary under Class F, and $2,100,000 under Class C?

A. I beg your pardon; yes, sir, I did.

Q. Then what is the total of those two sums?

A. You are correct; $6,376,044.39.

Q. Then I am correct when I say that you have charged Virginia with $6,376,044.39 as the value of the securities which she transferred to the Atlantic, Mississippi & Ohio Railway Company?

A. Yes, sir.

Q. For which she took a mortgage of $4,000,000, did she not?

A. Yes, sir.

Q. So then you have charged Virginia on the basis of these figures with $2,376,044.39 more than the amount of the mortgage which she took in exchange of those securities, have you not?

A. Yes, sir; but you must recall at the same time that Virginia has received in cash for one of these securities $886,685.00, being the Virginia Central Road.

Q. You are referring now, when you say that she has received that, to the payment made in Confederate notes, which was repudiated, as has appeared in your testimony heretofore, are you not?

A. I do not think that I testified on that subject at all. I simply made the statement that they had received this amount of money, $886,685. The balance of it was read into the record by yourself.

Q. You are referring then to the payments shown by the exhibit read into the record as having been repudiated by the State of Virginia, are you not?

A. Yes, sir; the money for which was never returned to the Virginia Central Road.

Q. Did you in the course of your investigation—

By the Master:

Q. How do you know that, that the money was not returned to the Virginia Central Road? Where did you get the information on that subject?

A. For the reason that there is no record of any such payment on the books of the State of Virginia.

By Mr. Harrison:

Q. No record of any such payment?

A. Any such payment or repayment by the State of Virginia, as far as I know.

By the Master:

Q. You found it entered on the debit side of the cash in the first instance?

A. Yes.

Q. But did not find it in any case entered on the credit side of the cash, is that what you mean by that?

A. Yes, sir.

By Mr. Harrison:

Q. Did your investigation lead you to the ascertainment of the amount which Virginia realized for this $4,000,000 mortgage which was accepted by her as consideration for $6,376,044.39 of securities listed on this exhibit, page 56?

A. Yes, sir, it did.

Q. What was the amount?

A. The $4,000,000 was—

By the Master:

Q. They were paid a certain sum for the purpose of getting the release of their equity?

A. That is the word I want. For the release of their equity they afterwards obtained $500,000.

By Mr. Harrison:

Q. Do you mean the State of Virginia received $500,000 in satisfaction of the second mortgage she had of $4,000,000.

A. I do not know what it was for, it was what they received for their entire claim against the Atlantic, Mississippi & Ohio.

Q. Do you know when it was received?

A. I have made no notation of the date, and I could not recall it now.

The Master: Does not the date of those foreclosure proceedings appear somewhere in the record, Mr. Harrison?

Mr. Harrison: Yes.

The Master: The statement is in substance that in the first place the mortgage was foreclosed by the first mortgage bondholders, and that the result of that was that the apparent equity of the State of Virginia in this $4,000,000 loan, being a second mortgage, was wiped out. But in order to get a perfect and complete title without any question or controversy, the road finally paid to Virginia $500,000, which of course must have been some little time after these foreclosure proceedings. Now the date of these foreclosure proceedings must be in here somewhere.

Mr. Harrison: January 25, 1883.

The Master: Have I got the transaction correct in my mind?

Mr. Harrison: Yes, sir.

Mr. Holt: We have the date as March 1st, 1882.

The Master: I do not suppose you are particular about the date.

Mr. Harrison: They are so near together that it does not make much difference. January 25, 1883, is the date when the money was received, but that date is immaterial. It was an act of 1882, but the money was paid in January, 1883.

The Master: I was going to suggest that we had better not have any apparent inconsistency between the date set up in the supplemental answer and the testimony, but still if the date is correct we had better let it stand.

Mr. Holt: I take it that Mr. Harrison has given the correct date of the payment under the Act; that is probably true.

The Master: That is not the way the answer reads, but probably that is what the answer meant. There is no harm done, because the date is of no consequence.

By Mr. Harrison:

Q. Now looking on page 57 of the printed record, at this exhibit, Plaintiff's Exhibit No. 6, the transfer of the loss of securities there shown of the Atlantic, Mississippi & Ohio Railway Company, you have put down under head of book value of June 30, 1860, $99.90 opposite the Virginia & Tennessee Railroad Company stock. Does that purport to be the book value of that stock on the 30th of June, 1860?

A. Yes, sir.

Mr. Holt: It should be the 20th of June, 1860.

A. Yes sir.

The Master: No, this is not 1863. That is the end of the fiscal year of the road, I suppose.

Q. And the South Side Railroad Company's stock, the same exhibit shows, you have given the book value to be $105.98 as of the 30th day of September, 1861, have you not?

A. Yes, sir.

Q. And the Virginia & Kentucky Railroad Company's stock you have put under the caption book value, par, $100, is that correct?

A. Yes, sir; that entry means that—it was intended to mean that the stock was taken at par and there was no book value. It is an entry at par.

Q. And the Norfolk & Petersburg Railroad Company stock you have given a book value of $89.52 as of the 31st day of March, 1861, have you not?

A. Yes, sir.

Q. Now, will you state if you please how you arrived at the book value of the stock in those four roads as shown on this exhibit.

A. By reference to the trial balances of these roads on the dates mentioned in the margin, shown by their printed annual report on file in the Comptroller's office of the Norfolk & Western Railroad Company in the City of Roanoke, Virginia. The Norfolk & Western being the successor of the Atlantic, Mississippi & Ohio, which had absorbed these roads, and they having these reports on file.

Q. Is there anything on your exhibit to show from what

records the figures there stated were taken?

A. No, sir, there is not.

Q. Do you include the Virginia & Kentucky Railroad Company in the explanation you have just given as to how you arrived at the value of these stocks?

A. No, sir. The Virginia & Kentucky Railroad Company had not as far as I know any trial balance or annual report of any kind. That is simply the amount of the stock held and the cost of that stock to the State of Virginia.

Q. You have taken the State's holding in that road and put down a book value of par for it?

A. Yes, sir. I have made the entry, as I stated before, to show that I have taken it—intending to show that I have taken it at par and that I had not determined the book value.

By the Master:

Q. Then there is not a thing on your exhibit nor is there anything on the books that you had access to that tends to demonstrate even the book value of the stock you have just referred to? You simply took the par and that is all there is of it?

A. No, sir; it was just an expenditure, and my recollection is that the road had never been operated.

Q. That rather tends to raise the inference that the stock was of very little value.

Mr. Lilly: Maybe it was under construction though.

Q. I do not know how that may be, but you must have something in the record that enables me to reach some intelligent conclusion. The statement that a certain road never was operated does not go very far towards establishing value; it rather tends to negative value. If there is anything in addition to that, you ought to put it in.

Mr. Holt: Does the witness say it never has been operated?

The Master: I understood him to say so.

Mr. Holt: Does he say it never had been operated up to that time?

The Witness: It had not been operated up to that time. It was under construction at that time and whatever there was of it was turned over to this other company.

Q. That is a very inchoate admission. What I was inquiring about in the first instance was whether there was anything on the records of the company that tended to demonstrate what you call a book value, and you say that there was not?

A. It was simply the construction value which had been turned over to this road. There was no trial balance.

By Mr. Harrison:

Q. Opposite the Virginia & Tennessee Railroad Company stock on your exhibit at page 57 you have under the caption par $3,452,813.32. What does that represent?

A. That represents the total amount of stock outstanding June 30, 1860, on the Virginia & Tennessee Railroad Company.

Q. It does not then represent the amount of stock held by the State of Virginia?

A. No, sir; that is shown in the second paragraph on page 57.

Q. Take the South Side Railroad Company where you have a par of $1,362,900. Does the same answer apply to that, that is to say, that that is the total stock issued by the road and not the total held by the State?

A. Yes, sir; the total held by the State being shown in the second paragraph of page 57.

Q. And the Norfolk & Petersburg stock $1,800,800, under the caption par is the total issue and not the amount held by the State?

A. That is right.

Q. Now, do you know anything about the physical condition of any of these roads at the time about which you are testifying?

A. No, sir; I have not examined their physical condition; I have only examined their trial balances.

Q. Do you know anything about their assets or liabilities?

A. Yes, sir; I do.

Q. Is it shown on this exhibit, what you know?

A. No, sir; it is not.

Q. Where will I find what you know about the assets and liabilities of these roads? Have you testified to it or shown it on any exhibit?

A. No, sir; I have not. You will find that on the annual reports of the companies which I have mentioned.

Q. But you have not filed those annual reports with us, and we have no knowledge or information about them?

A. No, sir, I have not filed any of those annual reports.

By the Master:

Q. The annual reports refer to three roads only, the Virginia & Tennessee, the South Side Railroad and the Norfolk & Petersburg?

A. Yes, sir, those only.

Q. The Virginia & Kentucky having no annual report?

A. The Virginia & Kentucky having no annual report.

By Mr. Harrison:

Q. When you speak of annual reports, are you referring to the records of the Virginia & Tennessee Railway Company?

A. In this case I am referring to the annual reports for these three roads on file in the Comptroller's Office of the Norfolk & Western Railway. They are the reports of these separate roads, but have fallen into the possession, through legal inheritance I suppose, of the Norfolk & Western Road.

Q. And whatever they may contain or show in respect to these roads as far as the Court and Master are concerned is shown on your exhibit, page 57?

A. Yes, sir, unless they desire to examine the records themselves or have copies furnished as sub schedules to this printed record on page 57. They are quite lengthy.

Q. Do their operating accounts show any charges for depreciation.

A. No, sir, no direct charge for depreciation.

Q. Would any one be able to tell whether the road was solvent from its income and expense account?

A. Yes, sir, from its income and expense account, and its interest charges of course being included in this case as I understand.

Q. Would that fix the value of the assets of the road?

A. No, sir; the earning capacity does not fix the value of the assets.

Q. As a matter of actual fact, have you not to judge solely and exclusively in respect to the solvency of the road from its assets and liabilities?

A. Yes, sir, that would be the final determination.

Q. And you have judged this book value from income and expense?

A. I have not.

Q. Well, does your exhibit show anything to the contrary?

A. Yes, sir.

Q. What does it show?

A. It shows that the liabilities of for instance the Virginia & Tennessee Road on June 30, 1860, exceeded its assets by $3,285.30; page 57 of the printed record.

By the Master:

Q. You find that under the head of profits?

A. Yes, sir.

By Mr. Harrison:

Q. Do you mean to say that that or anything else there shows what the assets and liabilities of the road were?

A. No, sir; it shows simply the difference between the assets and liabilities.

Q. Do you mean to say that this book value that you have given here is based upon the assets and liabiities of the road?

A. I do, yes, sir.

Q. Where are the assets shown?

A. On the annual report from which this profit and loss account was taken.

Q. You are testifying now to something that you have seen, but something that you did not deem of enough importance to produce here in evidence, is that true?

A. My recollection on that subject is that the offer was made in my direct testimony to have those books produced or to have copies of them made if it was deemed necessary. I think that was the offer that was made.

The Master: That does not answer the question. Repeat the question, Mr. Stenographer.

Q. (Question repeated by the stenographer.)

By the Master:

Q. In other words, have you got it in the schedules which you have produced, that is what that question practically calls for.

Have you produced any fact in relation to the assets and liabilities of the Virginia & Tennessee Railroad Company except what appears here on page 57, and if you have, in what schedule have you produced it?

A. I have not produced any such schedule. I would say, your Honor, I made the offer to produce it if deemed necessary or asked for.

Q. Isn't your book value in this case predicated specifically upon the diminution of the stock and the loss of profits during the preceding year, one per cent.

A. No, sir; it is the amount of loss which is shown on their books. It may not be due entirely to operation, and it may. It is the loss that their books show. They are that much shy in assets as regards liabilities.

Q. You took this I suppose from the profit and loss account; you have got it here under the heading of profits.

A. Yes, sir.

Q. And instead of being a profit, it is a loss; on that trial balance instead of having it on the credit side you have it on the debit side?

A. Yes, sir.

Q. Now, you put a star here which indicates to us that although under the column of profits, as a matter of fact that was a loss sustained in the operation of the road during the preceding year?

A. Yes, sir.

Q. Now, you take that sum of $3,285.30, being the loss, and you take the percentage that that bears to the total capitalization, and reach your book value of the stock in that way, don't you?

A. Yes, sir.

Q. You reach your book value in this way, in other words, you take the net loss, and upon the basis of the net loss, the percentage that that bears to the capitalization, you figure the book value? Without figuring it out, it seems to me that must be the result. That is right, isn't it?

A. Yes, sir.

Q. And do the same thing with reference to the Norfolk & Petersburg road, which according to the star here met with a net loss of that year of $189,942.12?

A. That is right, your Honor, with one exception; the loss may not have been incurred in that year. It is the total net loss up to date, up to that date, this being a trial balance.

Q. Well, the way you get your book value, you take that net loss of $189,942.12 and take the percentage that that bears to the total capitalization, and then work out your book value accordingly?

A. Yes, sir.

Q. And you say that loss may not have occurred during the preceding year, that is the whole of it?

A. No, sir. Or it may have gained slightly during the preceding year, but it is the net result up to date.

Q. Have you such a recollection of the account so that you can tell us whether there was a gain or loss on that last year? You need not stop to run it through. You have not any such recollection?

A. I have not the recollection, but I can tell you in a very short time, and I will have it handed to you at recess time.

The Master: We will suspend for a few minutes and just hand it to us then. And give us the net loss or profit during the last year.

The Witness: Yes, sir.

The Master: We will suspend here for five minutes.

By the Master:

Q. Now, can you give up those figures, Mr. Hillman?

A. No, sir; I am sorry to say, your Honor, that it does not show for the year. It is taken up in total, and does not show for the year. And I did not examine the accounts in detail enough to take off year by year their earnings or expenses.

Q. So that you have not data enough here upon which you can predicate the statement as to whether during the preceding year there was or was not a profit or loss on operations?

A. I have no data.

The Master: You may proceed, Mr. Harrison.

By. Mr. Harrison:

Q. What amount do you carry into your summary for June 20, 1863, as a charge against Virginia on account of the various

items mentioned in Exhibit No. 6, page 56, being the securities turned over by Virginia to the Atlantic, Mississippi & Ohio Railroad Company?

A. $4,566,015.61.

Q. Why is there a difference in the amount you show on that summary and the amount you show on the summary for January 1, 1861?

A. Because in the meantime the roads had been operating and increasing their surplus.

Q. Haven't you taken the same book value as the basis for determining the amount?

A. I beg your pardon, yes, sir, I have taken the same book value, but their holdings had in the meantime increased.

Q. Whose holdings?

A. The State of Virginia's.

Q. You mean that the difference is accounted for by the fact that the State had paid more on her subscription by June, 1863, than she had on January 1, 1861?

A. Yes, sir.

By the Master:

Q. What is the number of the blueprint schedule?

A. Page 45 of the blueprints.

By. Mr. Harrison:

Q. Now, let us take up this Exhibit No. 7, page 58 of the printed schedules, which purports to be a statement of the value of the James River and Kanawha Canal Company as it was absorbed and capitalized by the Richmond & Alleghany Railroad Company. What amount is shown by that exhibit to have been charged to the State of Virginia as the value of the James River and Kanawha Company as of January 1, 1861?

A. $5,437,341.38.

Q. Now, what is the total which you carry to your summary as a charge against Virginia on that account?

A. $5,410,429.54, as shown on page 60 of the printed record, which is the amount taken from the second annual report of the road, not the first annual report.

Q. Now, are the figures the same in your summary for June 20, 1863?

A. Yes, sir.

Q. Why do you charge Virginia with that amount at January 1, 1861, and June 20, 1863?

A. That amount is charged to this joint account for the reason that this is the amount which the Richmond & Alleghany Road valued the franchises and property which is acquired from the State of Virginia through the James River and Kanawha Canal Company on its books, and on the opening of its accounts.

Q. Still Virginia did not own the franchise of the James River & Kanawha Canal Company, did it?

A. It owned the stock of the company, and therefore I suppose was proprietor of all that went with the company.

By the Master:

Q. Do you mean it owned all the stock?

A. Yes, sir.

By. Mr. Harrison:

Q. What is your authority for that statement?

A. Well, I cannot say that I have authority for its owning every share of stock. I know that it was the party that sold the James River and Kanawha Canal Company to this railroad company, and I did not investigate to see whether or not they had up to that time acquired every share of stock or not. My impression is and was that they were the sole owners.

Q. You say you know the State is the party that sold the James River and Kanawha Canal Company to the Richmond & Alleghany Railroad Company. What is your authority for that statement?

A. The deed which they gave to the Richmond & Alleghany Railroad Company. conveying the property.

Q. Have you the deed?

By the Master:

Q. That is the deed that the State gave, you mean?

A. Yes, sir.

By. Mr. Harrison:

Q. Have you the deed?

A. I have not the deed, but the deed has, I believe, been placed on file.

Mr. Lilly: It has been introduced.

Q. I wish you would put your hands on it then, and let us see the deed which the State made.

Mr. Harrison: Is the deed here, Judge?

Mr. Holt: We have the deed here, and we have already introduced the deed and also introduced the Act.

Mr. Lilly: It is in the typewritten record.

Q. (Handing paper) I hand you Defendant's Exhibit No. 7, 1863, G, being a copy of the deed referred to. Look at it and tell us who made the deed to the Richmond & Alleghany Railroad Company.

The Master: That is, who is the grantor.

Q. Who was the grantor?

A. The James River and Kanawha Company.

Q. Then you were mistaken when you said that the State of Virginia made the deed to the Richmond & Alleghany, were you not?

A. Yes, sir.

Q. Then your schedule is based upon a mistaken fact, is it not, that is to say that the State owned the entire stock in the James River and Kanawha Company?

A. I do not know whether or not it is a fact that they did not own all of the stock.

Q. Your schedule, however, is based upon that hypothesis, is it not?

A. Yes, sir, that they owned the entire stock.

Q. If you are wrong in that hypothesis your schedule would be wrong, wouldn't it?

A. Yes, sir; it would have to then be reduced by the percentage that that outstanding stock bears to the total—I mean the outside stock bears to the total stock of the company. By the outside stock I mean that which is owned by other parties than the State.

Q. Now, tell us from what source you derived the statement—or you have made up the statement that is shown on this Exhibit 7, page 58, called trial balance sheet, first general balance sheet of the Richmond & Alleghany Railroad Company. Where did you derive the information upon which that statement was made?

A. From the first general balance sheet of the Richmond & Alleghany Railroad Company, on file in the office of the Vice-President of the Chesapeake & Ohio Railroad in the City of Richmond.

Q. That is not a complete balance sheet, is it, that you put in your exhibit?

A. No, sir; I have not put in a complete balance sheet.

Q. Why didn't you put in the complete balance sheet?

A. I did not consider that it was necessary, as its terms are specifically mentioned in that balance sheet.

Q. This statement on page 58 of the exhibits sets out that the Richmond & Alleghany Railway Company acquired the property of the James River & Kanawha Company and the Buchanan and Clifton Forge Railroad Company at a cost in stocks and bonds of $6,389,511.93. To whom did the Richmond & Alleghany deliver the stock and bonds there mentioned?

A. I do not know.

Q. You have treated it as if the railroad company had delivered them to Virginia, have you not?

A. No, sir.

Q. Did the Railway Company pay any part or deliver any part of that sum to Virginia?

A. No, sir; I do not know of their having delivered, or having any record of having delivered any stock or bonds to the State of Virginia.

Q. How much of that amount have you charged to Virginia?

The Witness: Your Honor, just a moment, this is a general observation if you please. When we say charge to Virginia it is understood we are presenting and including in our final account for adjudication between the States, and it is not charged against Virginia but placed in that column for final adjudication. Is that understood? I am not charging the State with it. I have noticed that right through, and it may be a little confusing later on.

By the Master:

Q. I suppose what you mean is that you have prepared these schedules and worked up this account and charged to what might be termed assets certain things?

A. Yes, sir.

Q. And then propose later on to make some distribution of the assets thus collected together?

A. Yes, sir.

Q. I do not think we will have any misunderstanding.

Mr. Harrison: I have not the slightest misunderstanding at all.

Q. Mr. Harrison considers a charge to assets practically a charge to Virginia, and that is the way the matter lies in his mind.

The Master: We do not misunderstand it, do we, Mr. Harrison?

Mr. Harrison: No, sir.

A. I have been answering under that supposition.

Q. You do not give rise to any false impression. Mr. Harrison carries the matter in his mind on the assumption that the charge to assets is practically a charge to Virginia, and so treats it all the way through.

The Master: I am right about that, Mr. Harrison.

Mr. Harrison: Yes, sir.

Q. Did any of those four railroads that are mentioned on page 57 declare any dividends at any time, and if so, does that appear in any exhibit? You can answer that question when we come in after lunch. If they did I want the facts to appear, that is all, or if they did not.

A. I am not sure that I can tell you.

Q. Then you need not bother to take the time to look it up now, but answer that question on coming in after recess.

The Master: Excuse me, Mr. Harrison, for the interruption.

By. Mr. Harrison:

Q. (Question repeated).

A. $5,410,429.54.

Q. If you have no evidence of any part of that sum having ever been received by Virginia why did you charge her with it?

A. For the reason that I am charging in this case, or trying to charge, the value of the property which was turned over, and not dealing with what was received for it, nor have I considered that matter.

Mr. Holt: The allegation of the answer is that she gave that away, and that we own part of it.

The Master: Your contention is that she ought to account for it at its par value?

Mr. Holt: Yes, sir.

Q. Were the assets which the Richmond & Alleghany Railway Company acquired under the deed of the James River and Kanawha Company encumbered?

The Master: That is, were there any liens on these assets?

A. Yes, sir; there was a lien upon them, shown on page 58 of the printed record.

Q. There are liens shown on page 58 also. Was there a mortgage or mortgages on these assets?

The Master: That, is in addition to the item of $1,393,637.66.

Mr. Harrison: Yes, sir; undoubtedly in addition to that.

A. Those liens were not mortgages. They were for supplies, etc.

Q. I want to know if there was any mortage or mortgages on the assets which the railroad company acquired from the James River and Kanawha Company.

A. Yes, sir, $1,393,637.66.

Q. You have already referred to those which are put down as liens. My question was in addition to that amount were the assets encumbered by a mortgage?

A. That is a mortgage, sir.

By the Master:

Q. That is not the question. The question is in addition to this item of $1,393,637.66 was there any mortgage in addition to that? If there was not, simply say so.

A. No, sir; I believe not.

The Master: That covers it.

By Mr. Harrison:

Q. Why do you say you believe not? Do you know it to be a fact?

A. No, sir.

Q. What is the foundation of your belief?

A. Because I did not run across any other mortgage in the investigation.

Q. Then what was the $6,389,511.93 issued for by the railroad company?

A. They issued that of their own mortgage bonds and their own stocks.

By the Master:

Q. Who do you mean by their own?

A. Richmond & Alleghany Company.

By Mr. Harrison:

Q. What did they get for it?

A. That I have not the slightest idea, what they got for it. They got this property for it.

Q. I thought they got the property for nothing?

Mr. Lilly: They did so far as Virginia is concerned, with certain limitations.

A. They issued these mortgages and stocks on the basis of the property that they acquired from the James River and Kanawha and Buchanan and Clifton Forge Railroad.

Q. For what purpose did they issue it?

The Master: If you know? If you don't know, say so.

A. I don't know.

Mr. Holt: Then just answer.

The Witness: I don't know what they issued them for.

The Master: I do not want to hurry you, Mr. Hillman, but do not take time when you don't know. If you don't know, say so, and that exhausts the subject of inquiry. You are not responsible for what you don't know, and you are not subject to criticism about it. In a question like that, if you don't know, say so and say so right off, and then we will go on.

By Mr. Harrison:

Q. Well, what is your answer?

A. I have answered it.

The Master: In the confusion Mr. Harrison did not get it. See what the record shows.

Mr. Harrison: I saw only the exhibition of a very tired feeling, but I did not know that he had answered the question.

(Testimony read by stenographer.)

Mr. Holt: As I understand it, your Honor, they acquired this property from the James River—

Mr. Harrison: Now, Judge, I would rather pursue my examination of the witness without having your explanation at this point.

The Master: That you are entitled to do. Of course the Judge does not insist on it if you object. Brother Harrison has a right to develop it from his point of view, and if he does not develop it satisfactorily you will have your turn.

Mr. Holt: It is so long and tedious.

The Master: I do not know about that. They have a right to develop it in their own way for whatever it may be worth. I am not intimating by any means that your statement would not have been both instructive and illuminating. My observation has been that they usually are.

Q. Have you a complete transcript of the balance sheet, which is partially shown on your Exhibit No. 7, page 58, of the printed record?

A. Yes, sir; I have.

Q. What is the total of the invested assets as shown on the balance sheet? The complete balance sheet I refer to now.

A. September 30, 1881, assets $13,510,248.46.

Q. Does not that sum include over eleven million dollars of invested assets?

A. Yes, sir; $11,798,156.36.

Q. That was the figure I asked you for.

By the Master:

Q. Now, for my information, is this the balance sheet from which the figures found on page 58 are taken?

A. Yes, sir.

Q. That is 1881. When was this transfer made, in 1881?

A. Made in 1880.

Mr. Harrison: The Act was passed February 27, 1879.

The Master: Now, then, this has significance so far as it has a tendency to establish value in 1861, twenty years earlier?

Mr. Harrison: I presume that is what he is introducing it for.

The Master: This is a balance sheet in 1881, as tending to show value in 1861?

Mr. Harrison: I presume so.

Mr. Lilly: That is right, your Honor.

By Mr. Harrison:

Q. Now, what was the capitalization of the company?

A. $5,000,000.

Q. And the amount of the mortgage bonds, that is to say, what was the capital and the mortgage bonds, the aggregate, including the Alleghany Car Trust?

By the Master:

Q. Have you not got a copy of this balance sheet right there?

A. Yes, sir; but I have to add them up.

By Mr. Harrison:

Q. (Handing paper), I will hand you a copy that is added.

A. $10,824,000.

Q. Then is it not a fact that the liens are taken up on both sides of the sheet?

A. No.

Q. Among the assets and liabilities?

A. No.

Q. Do you mean to say that the assets and liabilities are not taken up on both sides of the sheet, not shown on both sides of the sheet—the assets and the liens I mean?

A. That question is totally incapable of being answered, your Honor, it does not mean anything. I will have to have the meaning.

The Master: Well, try it again.

Q. I find on the sheet James River & Kanawha Company and Buchanan and Clifton Forge Railway Company liens, among the liabilities. Is that true or not?

A. Yes, sir, $1,393,637.66.

The Master: Well, now, that does not happen to be the amount. Have you not got the copy of the trial balance?

Mr. Harrison: I have given him the exact copy.

The Master: He is confused about it in some way, because that is obviously wrong. He asked you for the James River & Kanawha and the Clifton Forge liens, and that appears on that sheet among the liabilities as $1,537,381.41.

The Witness: Yes, sir.

The Master: As a matter of fact the witness gave the James River & Kanawha Company's lien.

The Witness: It is the list of liens that are on file with the trustee.

Q. As part of the cost of the road?

A. As part of the cost of the road.

Q. Then if that is true the capital stock and the bonds issued must have been for the other items of assets, were they not.

A. I do not know what they were issued for.

Q. All right, sir.

By the Master:

Q. Does not your note, Mr. Hillman, on page 58, show what these stocks and bonds were issued for? You say, "Acquired the property of the James River & Kanawha and the Buchanan and Clifton Forge Railroad at a cost in stock and bonds of $6,389,-511.93, thus securing legal right of way for its railway lines, basins and docks in Richmond, and other property." Does not that show?

A. Yes, sir, that shows. The reason I answered as I did was when I had made that statement that these stocks and bonds were issued for that purpose, in the acquirement of that property, I was then asked to state why they were issued, and I supposed it was the same question coming over again.

Q. Then you said you did not know, and as a matter of fact it is so obvious you did know that it is hardly worth discussion, is that it?

A. Yes, sir.

Q. You do not mean to say that that is an adequate reason, after you had stated in your schedule just exactly what these stocks and bonds were issued for, and then you were asked what they were issued for and you said you did not know, and the reason you did not know was because you had stated the information in your note, is that the way you explain that?

A. No, sir; it is so obvious what they were issued for, and I made the statement what they were issued for, that I mistook this for the second question that was asked me some time ago, as to what this big issue of stocks and bonds going out, to whom they were paid, and what they were paid for, meaning why should they obtain a property for practically a small amount and issue stocks for a large amount, and it was to that that I said I did not know. I know why they were issued upon these properties that they acquired.

The Master: That is a pretty intricate process of reasoning.

The Witness: If your Honor will follow some questions just immediately preceding this you will see the trend that my mind took on this subject, because it was so obvious that I did not think they could ask that question.

The Master: You must not conduct so elaborate a process of reasoning in testifying in this case. Suppose they put the same question half a dozen times; it calls for the same answer, does it not?

The Witness: Yes, sir.

The Master: You just wipe out this process of reasoning and devote your time to answering particular questions, and your examination will get along better. Excuse me for this lecture, but that is pretty near the fact.

By Mr. Harrison:

Q. Is there anything whatever in this balance sheet to justify the assumption that the assets acquired by the Richmond & Alleghany Railway Company were not covered by an equal amount of liabilities?

A. I do not understand that question.

Mr. Harrison: I will let the stenographer read it.

(Question repeated by stenographer.)

A. Yes, sir.

Q. What is it?

A. The liabilities assumed being between one and two million dollars, and the stock and bonds issue being for between six and seven millions, would indicate that there was a value conveyed above the amount of the mortgage or lien.

Q. If the issue of $10,824,000 capital stock and bonds was not intended or designed for the purchase of the assets shown on the balance sheet, what is your theory as to what they were intended for? How would you, as an expert account for the issue of $10,824,000 of securities, stocks and bonds, under such a state of affairs as the question embodies?

A. That they had acquired a property of a great deal of value at a very small figure, and were then capitalizing it up to its value; or else that there was a bald steal in the issue of the stocks and bonds.

Q. That the railway had perpetrated a bald steal, is that the meaning of the answer?

Mr. Holt: Let the answer itself be read.

(Answer read by stenographer.)

By the Master:

Q. I suppose, in other words, you would term it water or wind?

A. Yes, sir.

By Mr. Harrison:

Q. What would be the natural construction when you find on a balance sheet an item of assets which includes the right of way and franchise, which cost $5,588,609.76, the cost of road $4,607,217.53, the cost of equipment, the cost of the Richmond Dock property, and real estate, all items aggregating $11,798,156.36 of assets, which cost that much money, or evidencing money; and you find under the liabilities, capital stock and bonds amounting to $10,824,000? What would be the natural inference to draw from those two statements? Would it be that the capital stock and mortgage bonds had been issued to acquire the assets enumerated above?

A. Yes, sir; that would be the inference.

Q. Have you not testified that of the stock and bonds issued by the railroad company $6,389,511.93 were issued to acquire the right of way and the docks in Richmond, and other property?

A. Yes, sir; I have quoted that from the report, and it is in my testimony, page 58.

Q. And have you not also testified that the State of Virginia received no part of it?

A. As far as I know they received none of it.

Q. And that, notwithstanding you were charging Virginia with $5,410,429.54 of it?

A. Yes, sir; being the value of the property on that date as shown on page 60 of the printed report.

By the Master:

Q. You mean the value of the property in 1881?

A. Yes, sir.

Q. And you therefore assume that that is the value on January 1, 1861?

A. That is the value at that date, yes, sir.

Q. That is, you fix the value at January 1, 1861, because you find that value in this report of January 1, 1881.

A. Yes, sir.

Q. Or September 30, 1881?

A. Yes, sir.

The Master: I want to keep the connection in my mind. I get it now.

By Mr. Harrison:

Q. You have applied the value which you have figured out on your exhibit, page 58 of the printed record, under the sale of the James River and Kanawha Company's property to the Richmond & Alleghany Railroad Company in 1881 as the value of the property January 1, 1861, and June 20, 1863, have you not?

A. No, sir, I have not. I have taken the value on the next date, shown on Page 60, the reason being that on page 60 the value was slightly less than shown on page 58, and I thought I would take that instead of the prior date.

Q. It is only a few dollars less, isn't it?

A. About $46,000, yes, sir.

Q. Then the value that you have taken and applied as of January, 1861, and June, 1863, is shown on page 60 to be $5,410,429.54, is that right?

A. Yes, sir; on January 1, 1861, and June 20th, 1863.

Q. And that is the result of your statement as to the value of the property acquired by the Richmond & Alleghany Railroad Company in 1881, is that right?

A. Yes, sir.

Q. Did you find in the course of your investigation whether the James River and Kanawha Company had paid a dividend on its stock?

A. No, sir; there had been some dividends paid from time to time on the stock. I did not investigate it.

Q. You didn't think that of any importance?

A. No, sir.

Q. Haven't you in the course of other securities deemed it of

very vital importance in reaching your conclusions about value at these distant dates in the past?

A. No, sir; I have not.

Q. Then you do not attach any importance in your testimony in relation to values that you have given here to the question of the payment of dividends on the securities?

A. Not as far as my statements which I have made in this case go, no, sir; I have not considered the dividend basis save in making a statement on my blueprints for 1863 concerning the bank stocks where I have no other data to go on, and simply made the statement that they had continued to pay dividends at the usual rate.

Q. But the question of the payment of dividends you regarded as an unimportant question?

A. I did not consider it.

By the Master:

Q. Well, what do you say about that question? He asks you if you considered the payment of dividends an unimportant question. You say you did not consider it; but that does not answer the question. What do you say to that question? Do you or do you not consider the question of dividends an unimportant factor, that is the question and I would like to get your views about that.

A. I do not consider it unimportant.

Q. You do not consider it unimportant?

A. No, sir.

Q. The result is that you do look upon it as an important factor?

A. It is a factor which enters into the determination of every value, but how far it was controlling depends upon individual cases and instances.

By Mr. Harrison:

Q. You now say you consider the question of payment of dividends important. If so, why then didn't you take account of it in your testimony in the matter of values? You have testified that you did not consider it; why not, if they were important?

A. For the reason that I have determined as far as possible actual values and not values based upon dividends.

Q. Actual values?

A. As far as I could.

Q. Do you mean now to testify that the figures you have testified to here constitute actual values?

A. Yes, sir; as far as could be determined.

Q. And not book values?

A. A book value is an actual value.

Q. You would accept these book values as constituting the actual cash value of the securities in each case?

A. As constituting the actual value of the securities.

Q. And would advise their purchase on that basis?

A. That is an entirely different matter.

Q. A horse of another color, isn't it?

A. Advice as to purchase is an entirely different matter from dividend value.

By the Master:

Q. Don't you understand that the result we are trying to reach here is equivalent to a purchase? Do you think we are trying to get a value here that is distinct from what would be the fair value on the basis of purchase?

A. No, sir, I do not.

Q. Then your conception of the whole situation is that we are practically determining the fair purchase value, isn't it?

A. Yes, sir; that is the point to be determined.

The Master: Precisely. The cross-examination may proceed, Mr. Harrison.

By Mr. Harrison:

Q. Haven't you several times testified that you did not wish to be understood as testifying to anything except what the books showed, whether it was cost or whatever it might be that was to be put down as value, without expressing any opinion as to whether or not that represented actual value?

A. Yes, sir, I have.

Q. Is that your present position or do you now wish to change that?

A. That is the position that I have wished right along to hold, and from which I have been forced by the cross-examination, time and time again, to an expression of an opinion instead of confining myself to the actual facts which I have presented here.

By the Master:

Q. The question is now whether you intend to change your base upon your own examination and your own method. Do you intend to change from book value to actual value or is it now your contention that the book value is the actual value?

The Master: That is your question, isn't it, Mr. Harrison?

Mr. Harrison: Yes, sir.

A. That is just what I finished saying, your Honor,

Q. How am I to understand you? You have said that you were testifying to the book value only; that was entirely aside from my questions that have been asked you on cross-examination on another hypothesis; and you have stated that the book value was one thing and the actual cash market value was another. Now, do I understand that you adhere to that as a general proposition or that you now say that the book value in your judgment is the actual cash value? That is what I want to know. Which do you say?

A. Your Honor, if you will leave out the word cash I could answer that better. Cash value—

Q. I do not leave it out; I will leave it in.

Mr. Holt: His answer I believe will explain his position.

Q. I simply want to know whether the hypothesis upon which you have been proceeding is the one under which you now stand or whether we are to understand from now on that you proceed on a different hypothesis.

A. I proceed under the book value as showing the actual value of the security which we have under consideration. It is always understood that a book value, if used that way, is predicated on the fact that your books have been honestly kept. You have asked concerning the cash value, and I believe the question was brought up yesterday, and I answered that the cash value was practically the market value, and I meant by that statement that if you wanted to determine how much cash you could get for a security at a given date you would have to find out what other people got for their securities at that date, and that is the amount of the cash that you could realize on it, not necessarily its value.

Q. Do you wish me to understand that in your opinion the book value is equivalent to the actual cash market value? Do I make that question plain?

A. No, sir; the two are not equivalent.

The Master: That is all.

By Mr. Harrison:

Q. Did you ascertain and do you show in any exhibit the book value of the James River and Kanawha stock on either of these dates, either January, 1861, or June, 1863, or any other date?

A. No, sir, I do not.

Q. Why didn't you do that in order to determine the value of the State's holdings in the company?

A. Because the book value of that would be simply the par value of the stock.

Q. It would be?

A. Yes, sir.

Q. Do you mean to say the books of the company show that?

A. It shows that the State has paid that money over and that that money has been invested in the construction of the canal. It was one of the requisites before the State would invest that subscriptions should be made and work should be done, and therefore the amount of work done would be shown by the total amount paid in, and that would be par, and the State's value then would be $10,400,000.

By the Master:

Q. You mean that is the State's par holding in the James River and Kananwha Canal Company?

A. Yes, sir.

By Mr. Harrison:

Q. Do you mean to say that the amount expended by the State in the purchase of its holdings would represent its book value?

A. Yes, sir.

Q. You said you examined the Master's report; am I right about that?

A. Yes, sir; I read it over.

Q. On page 192 and 193 of his report he states the James River and Kanawha Canal Company value, and I will read you this extract:

"A detailed statement of the investment of the Commonwealth in the capital stock of the James River and Kanawha Company appears on pages 820-L and 820-M of the record. By this it appears that 3.49 per cent. of the improvement was located in West Virginia (page 820-M). The only dividend that the Company appears to have ever paid is $10,092, in 1836 (page 820-L). Under these circumstances I find that the stock of this company had no value on June 20, 1863."

Q. In the course of your investigation of this report, did you find that conclusion of the Master?

A. Yes, sir.

Q. And did it serve as any guide to you in your investigation?

A. I read that, yes, sir.

Q. Did you find any other dividend than the one which he states was paid?

A. No, sir.

Q. Did you find that?

A. I did not look for it.

By the Master:

Q. Mr. Hillman, this item No. 2, franchises and right of way, $5,588,009.76; did you make any investigation of the accounts of either of these companies to ascertain upon what that item is predicated, how much of it is attributable to right of way and how much of it to franchises?

A. No sir; there is nothing to show that at all on the books of the Company.

Q. Are the books of the James River and Kanawha Canal Company out of existence or nonexistant?

A. I do not know of any; I have not run across any; I could not say whether there are any books or not.

Q. Then in the absence of the books of the James River and Kanawha Canal Company it is pretty difficult for you to make any statement about that company, isn't it? What I want to get at, I want to see how much of that item is treated as franchises, and I want to see how much of it is treated as right of way, and then I want to find out whether this was a franchise granted to this Company by the State of Virginia, that the Canal Com-

pany has put an arbitrary value on, that is, I want to see what that item means.

Mr. Harrison: The railroad company.

Q. Yes, the railroad company. I want to see how much they call franchises and how much they call right of way.

A. There is no record now, your Honor, that will give you that.

Q. The books of the James River and Kanawha Canal Company can give it, that is if they are kept as they ought to be kept. You have not seen them?

A. No, sir.

Q. Are they in existence?

Mr. Anderson: I have no doubt they are.

A. I do not think, your Honor, that they would show.

Mr. Holt: The only schedules that seem to be extant so far as the evidence is concerned are the schedules in this deed where the transfer was made to the Richmond & Alleghany Company. They just simply turned it over to the Richmond & Alleghany Railroad Company, their road, and the Railroad Company, laid down the ties and rails.

The Master: Yes, but here is an item upon which is predicated a large charge to the asset column, and this item is stated as franchises and right of way. What I would like to know is how much of that is right of way, and I would like to know how much is franchises, and if that is right of way I would like to know how much it cost somebody, and if it is franchises I would like to know whether or not that is the legal situation that is created by a grant of the State of Virginia to this James River and Kanawha Canal Company and that they call their franchise, the right to use this property, and I want to see how much that item is and I want to see how much value that item had. If I am to pass on this intelligently I want to know what makes up that item.

Mr. Holt: So far as we go, as I understand it, there was no separation in those items at all. They just recapitulated.

The Master: Have you any information, Judge, except what you got from Mr. Hillman?

Mr. Holt: From the Acts of the Legislature that are in here and from the deeds that are in here. The James River and Kanawha sold to the Richmond & Alleghany whatever they had there.

The Master: Of course I have not seen the deeds and I do not know what light they may give.

Mr. Holt: All the property that they had was just bunched and given to them.

The Master: I want to get at this question, I want to find out how much this cost, at some time, if it cost them anything. And then I want to find out about this Richmond dock right, $1,000,000. I want to ascertain if that appears in this statement of this Richmond & Alleghany Railroad Company as representing actual value and expenditure by somebody at some time, or whether it is put in here as a basis for capitalization. There is quite a difference between the two. And if the information is in existence I want that before this case is concluded, from one side or the other.

Mr. Anderson: If your Honor please, there is not simply evidence, but I think there is absolute proof of it.

The Master: I want one side or the other to present to me before this hearing concludes—you can see what is in my mind—for instance here is Richmond dock, $1,000,000; of course I have not the slightest knowledge of this, they may have cost someone $100,000, and this company may have put them in here as the basis for capitalization at a million dollars. If that is true, and I am to give serious consideration to this, I want to know about it. And they may have cost considerably more than a million. I do not know. The mere statement of it here as one million dollars as the basis for capitalization does not convey to my mind the idea that I would like to have to predicate actual values on. I have got to find what the value of this property was in 1861, predicated upon a statement made in 1881 as the basis for capitalization. I want more information than I have here to make that conclusion on. Do I make that clear?

Mr. Harrison: Yes, sir.

The Master: I do not know how it may develop, but as it stands here and speaking right as it does, I have not got the information that I want in order to reach an intelligent conclusion.

The Witness: Your Honor, on page 59, answering one of your inquiries, you will see that there was $1,000,000 arbitrarily assigned to Richmond docks and basin, leaving the charge to right of way and franchises, $5,588,609.76.

The Master: Who assigned that?

The Witness: The Richmond & Alleghany Railroad Company.

The Master: That tends to increase my suspicion that a good deal of this is the basis of capitalization and not value.

Mr. Holt: Your Honor, we expect this schedule, whether it be weak or strong, is simply offered for whatever persuasion it may have in it. We put it in for what it is worth. We expect to offer some more evidence on that subject.

The Master: I simply call attention to it now so that both sides can see how the matter lies in my mind. I want all the facts connected with the matter.

Mr. Holt: We are going to give all we can find.

Mr. Anderson: We will bring out from Mr. Hillman facts that will show the value of this property.

The Master: I do not want to be up against an item of five or six million dollars and have to speculate and guess about it.

By Mr. Harrison:

Q. I will ask you a question in relation to this matter. Did your investigation of this matter of the affairs of the Richmond & Alleghany Railway Company lead you to the ascertainment of what became of it? Did you go beyond 1881?

A. No, sir, I did not.

Q. You did not ascertain that the Richmond & Alleghany Railway went into the hands of a receiver about 1883?

A. I know that that is a fact, that it did, that it went into the hands of a receiver later on.

The Master: How much later on?

Mr. Harrison: About two years, it became insolvent and went into the hands of a receiver. It was sold under foreclosure proceedings here in the Circuit Court of the City of Richmond.

The Master: By the way, when you are looking up these accounts, tell me whether or not from the time of the declaration of those dividends, did I specify in my report this Canal Company was operated at a loss or a profit. If they did not declare any dividends I would like to know whether they accumulated anything.

Mr. Harrison: All that we went into in the former investigation from one end to the other.

Mr. Holt: I think you are mistaken about that, Mr. Harrison.

The Master: I think so too, because I think if the other record

had disclosed the operations of the company in addition to that dividend, I think I should have stated it in my summary. My impression would be that all that appeared in connection with that was a dividend of $10,000, away back in 1836. However, we should have it in this record.

Mr. Lilly: And the character of the work that was done over on the West Virginia side.

Mr. Hogg: In determining the expenditures made by Virginia in West Virginia that was the only phase in which it was up.

Mr. Harrison: We went into the history of the old James River Company, the parent company, and the James River and Kanawha Company.

Mr. Anderson: Three-quarters of that record was never printed. A great deal of the evidence was not printed.

Mr. Holt: We do not deny that you gave a history of the company in one sense, but it is pretty silent on the question of value, that is our point.

The Master: I am afraid it may develop that that particular question was not very much at issue in the previous hearing and I have not read, since I made my report, the various paragraphs that I was requested to find on, but my impression is that when you read them you won't find that I had any authority to determine the value of any of these assets that were in controversy here. I may be wrong about that. The suggestion is only made here that the issue is pending here, my impression is, without having read the paragraphs, was not specifically presented to me before. I am not suggesting whose fault it was, or that it was anybody's fault. Now if it was not, then whatever came in came in on another hypothesis, and was considered by me upon this hypothesis. Of course that is merely a suggestion. All these things are for argument later on. It does not make any difference what my report showed, each side is entitled to the benefit, and I shall consider it all. I am simply making that suggestion. And even if it was, the whole thing is now raised before me on this supplemental answer, and I cannot shut out either side from the submission of anything that they think is material as bearing on that. Of course right now we are on this James River and Kanawha Canal Company. If anybody can satisfy me that any conclusion I reached in that report was wrong, I shall

so hold. Of course I shall have to be satisfied. I do not mean that I will not change it if you can satisfy me, but you must satisfy me. This subject is to be resumed. If it is in the original transcript I will take that.

We will suspend until twenty minutes past two.

Recess until 2:20 P. M.

AFTER RECESS.

Continuation of the cross-examination.

CONWAY W. HILLMAN.

By Mr. Harrison:

Q. The second item in the supplemental answer at page 59, Class G, is Manassas Gap Railroad Company, which is dealt with by its exhibit No. 7-A on page 61 of the printed exhibits. Do you show on that exhibit amount expended by the State, either in the purchase of stock or otherwise, on that road, or on account of that road?

A. No, sir, I do not.

Q. What do the figures represent that you have on that exhibit?

A. They represent the cost.

Q. The total cost of the road?

A. The total cost of the road and the amount of stock which was paid up on the road.

Q. And does not show the holdings of the State in the stock of that road?

A. No, sir; the holdings of the State on January 1, 1861, were $2,105,000 par.

Q. Why did you not show on that exhibit the amount expended by the State, to-wit, $2,105,000 for the stock of that road?

A. For the reason expressed in the foot note there, and that no claim was made by us for the consideration of this item in our final exhibit.

By Mr. Conrad:

Q. By us?

A. By West Virginia.

By Mr. Harrison:

Q. I see no explanation in the foot note to which you refer, such as you have given. The foot note reads as follows, if you call it a foot note, "The road was not operated at that time and no other value than the above was obtainable."

A. And further, "In 1869, the State gave its stock in this road to the Orange & Alexandria Road, forming the Orange, Alexandria & Manassas Gap Road, the condition being that shares of new stock should be issued to all outside holders of old," that is other than the State.

Q. You have not extended then in your summary of charges against Virginia the amount which she expended for stock in that road?

A. No, sir, I have not.

Q. Why did you not do it?

A. For the reason that this road was not sold for anything, and was given away simply on the condition that the stockholders outside of the State should be taken care of, and therefore I did not put it on.

Q. Then you pursued a different method—

Mr. Lilly: I just want to make one statement, that we will have other data and evidence in reference to the value of this road as of the dates relied on.

Mr. Harrison: I would like to be able to pursue my cross-examination without any interruption. I do not intend to be captious, I have been as patient as anybody could be, but I would like to wind up with this witness without any interruptions. If you gentlemen want to put in some statements, just reserve them until I get through.

Q. Then you pursued a different method with respect to this road from other items that you have testified to, did you not?

A. Yes, sir, I did.

Q. Why did you do that?

A. For the reasons that I have just stated.

Q. Was there any other reason, than that this interest was given away, that you did not charge it to Virginia?

A. Yes, sir.

Q. Well, what was it?

A. I will state that in Class G, in the supplemental answer, pages 58, 59, and 60, these were classed as you might say as a special lot of securities of doubtful value, as is shown by the assumption that they were only worth 25 per cent. of their face; and for that reason I did not put in any value for this road or any of the other ones there, excepting the James River and Kanawha.

Q. Why did you except the James River and Kanawha and treat that differently from the rest of the items in Class G when it stood on the same footing?

A. Because it went right to a road where we could trace it thoroughly, and where we could trace its valuation and get some idea as to what it was worth and how much it was worth.

Q. Then you treated the James River and Kanawha—the State's interest in that company—different from the others because you could trace that item and have something to say about its value?

A. Yes, sir; and because it seemed worth while to trace it.

Q. Have you not charged to Virginia, in other instances, as of value on January, 1861, and January, 1863, the cost of her expenditures?

A. Yes, sir; I have.

Q. Then why did you do that in some cases and yet not charge the item of cost in the Manassas Gap Railroad Company?

A. I have just explained that once, that this being a class by itself in the supplemental answer, I did not do so save in this one case.

Q. Then you pursued a different principle when you ascertained the alleged value of these securities, from that which you pursued in respect to the Manassas Gap Railroad Company?

A. Yes, sir.

Q. You knew what the cost of the State's expenditures in the Manassas Gap Railroad Company was, did you not?

A. Yes, sir.

Q. It was shown on the books, was it not?

A. Yes, sir.

Q. And yet you did not charge that to Virginia as its value in 1861 or 1863?

A. No sir, I did not.

Q. In other cases you knew no more than you did in respect to the Manassas Gap Railroad, that is, you found on the books what it had cost her to acquire an interest in them, didn't you?

A. Yes, sir.

Q. And yet you charged that to her as cost in January, 1861, and June, 1863, didn't you?

A. Yes, sir.

Q. And you have no other reason for that than that the Manassas Gap Railroad was included in a class in the supplemental answer which stated that the values were uncertain?

A. Yes, sir.

Q. Was the value of the Manassas Gap Railway any more uncertain than the other items which you charged at cost as representing their value in January, 1861, and June, 1863?

A. That I couldn't say.

Q. You knew the cost in each instance, didn't you?

A. Yes, sir.

Q. And yet you did not know anything more than that the books showed the cost. Then why cannot you say?

A. I can say, but I did not say.

Q. You can say that you cannot say, was that your answer?

A. Let the stenographer read the answer.

(The witness' answer was repeated by the stenographer.)

Q. I have asked you to say.

A. Please repeat the question.

(Question repeated by the stenographer.)

The Witness: I think my answer covers that, your Honor. Does it or not?

Q. I will give you a specific instance. You have charged Virginia with $272,000 as the value of her interest in the Alexandria Canal Company stock as of January 1, 1861, that item representing the cost to Virginia. If it was proper to charge Virginia with $272,000, based upon the cost of her interest in that company, why wasn't it proper to charge her with $2,103,000 as the value of her interest in the Manassas Gap Railroad Company.

that item representing the cost to her of her holdings in the latter company?

A. It would have been proper to have charged her with the cost of the Manassas Gap road.

Q. Then why didn't you do it if it was proper to do it?

A. For the reason that I have just stated, which perhaps may not be considered a sufficient one, that it was in this Class C, wherein they were prorated on a basis, and the statement is on page 59, "The evidence of the actual value of this stock as of that date has become so obscure that it was thought best, etc., to place a value thereon at the rate of 25 cents on the dollar," and for that reason I did not make any claim on the securities here outside of the one I have mentioned, the James River and Kanawha.

Q. You now say that it was proper to have charged the cost to the State of her interest in the Manassas Gap as its value in January, 1861, and June, 1863?

A. Yes, sir; to present that matter for consideration, as I have said before.

Q. But you did not do it?

A. I did not do it.

Q. No claim I believe you said being made for it because of its uncertain value?

A. Because of the statement, yes, sir, which I read from G.

Q. Now, if the State's interest should not have been charged to her as cost of her interest in that road, then you were wrong in charging the Alexandria Canal Company stock to her at cost, were you not?

Mr. Lilly: I object to the question, because he said it should have been charged, and now you assume that it should not have been, and you are reasoning from a false hypothesis.

Mr. Harrison: I thought you had a legal objection to make to my question, Mr. Attorney General. I would like to have a chance to have this witness answer my questions unaided.

The Master: Mr. Lilly suggests that your hypothesis is not justified by the facts as they exist.

Mr. Harrison: Absolutely justified.

The Master: Let us see what the question is.

(Question repeated by the stenographer.)

Mr. Lilly: Does the Master get my objection?

The Master: Yes; I am inclined to think that it does include to a certain extent perhaps an erroneous assumption, Mr. Harrison.

Mr. Harrison: If your Honor please, the witness has given at least two or three reasons for not charging to the State the cost value of her interest in the Manassas Gap road.

Mr. Lilly: But he said he should have done it.

Mr. Harrison: His reasons in the beginning were that it was not proper to do it, he could not tell anything about the value of it. The answer itself said the value was uncertain, and he had no means of fixing any value for that charge. Now it turns out that all of the other stock, or substantially all of it, has been charged at cost value, and when pressed on that line he says, to be consistent, that this doubtless should have been charged as the other was charged; it would have been a proper charge. But yet it was not made because—referring to the answer again. Now my question is that if it ought not to have been charged, then the other items similarly situated ought not to have been charged either.

The Master: But the trouble about it is this; he has not conceded on your cross-examination the item of $2,105,000 is as a matter of fact a proper charge. You finally reached that result with him. Now you are trying to measure his previous charge by what he now admits to be the proper basis in respect to this charge, and on the assumption that there is a distinction between the two.

Mr. Harrison: He has testified that he had applied a different principle.

The Master: He has admitted on your cross-examination, Mr. Harrison, that this was equally a proper charge. Now I think perhaps you are assuming.

Mr. Harrison: Haven't I got a right to assume if it is a proper charge—

The Master: Well, and you have asked.

Mr. Harrison: But he has not answered that.

The Master: The final result of your cross-examination of him was that this was a proper charge. He did not make it. He says that the $272,000 was also a proper charge, and you have now succeeded in drawing from him the admission that this item of $2,000,000 is likewise a proper charge. Now the question is if this charge was not made here the other charge should not have

been made. That is practically what it comes down to. It is argumentative, but the fact about it is that the witness has admitted your hypothesis out from under you. He says himself now that although he did not make this charge that it was a proper charge. You cannot measure in my judgment the propriety of the two hundred and seventy-two thousand dollar charge on an assumption that in a sense is inconsistent with the admission of the witness. It is a technical objection, to be sure, but of course if they insist on it it seems to me that inadvertently you have asked an improper question.

Mr. Harrison: I do not think it would hurt if we got all the light we could on this subject.

The Master: I do not think it would either.

Mr. Harrison: I am testing his reasons and the accuracy of his knowledge.

The Master: And you have done it very well. But of course if they raise the question of the legal propriety of this question I shall have to pass on it as the rule requires.

Mr. Lilly: We do not care to raise the technical objection, but he says that the $2,105,000—

The Master: Your objection is that the question assumes a fact that is contrary to the admission that the witness has made, and on that assumption proposes to measure the previous charge. I think it tends to include an erroneous assumption, and for that reason I should feel bound, if the technical objection is made, it seems to me that the question is open to the criticism that in a sense in any event it assumes a hypothesis, as the basis of the question, that the witness himself does not admit.

Mr. Lilly: I might say that as to this item of the Manassas Gap, that this is not all the evidence that we rely upon.

The Master: My judgment is that it would not do any harm to have the witness answer the question, but if they raise a legal proposition that requires me to pass as a matter of law upon the form of the question, I feel bound to say that it seems to me that it is open to criticism.

Mr. Harrison: All right, if you do not want the question answered, let it go unanswered.

Q. Now we will take the third item in Class G, page 62 of the printed schedule—

The Master: Before we pass that item, I want to make an inquiry. I would like to know whether West Virginia still insists on this Manassas Gap item.

Mr. Harrison: He has not extended it as part of the claim.

The Master: I get the impression, as the result of Mr. Harrison's cross-examination, that it is not insisted on, and I would like to have a statement, either from Mr. Hillman or the counsel on the other side as to whether or not they do insist on it.

Mr. Lilly: We do insist on it, and we expect to bring in other evidence to show the materiality, and what it was worth as of those dates and simply because it has not been carried out on those dates, it is simply a tentative summary.

Mr. Harrison: My friend says that is only a tentative summary. I would like to know what an exhibit is—when it becomes final. Here are exhibits tendered here by this witness and sworn to, and now we are told on the cross-examination that they are tentative and mean nothing.

The Master: I do not quite so understand it.

Mr. Lilly: He did not say that.

The Master: I do not think he intended to convey that impression. I will say this, if either side gets in on this record a schedule or a statement as to which during the course of this hearing they see fit to change their base and take another attitude, I shall have to allow them to do it. Of course that depends altogether upon what sort of a criticism the schedule is subject to. Any position that is taken on either side here is a position that either side, if they see fit to reverse, they can reverse it. Now I think they are confined to this supplemental answer, but subject to that any schedule that they put in here, until this hearing is closed, they can amend it if they see fit, of course subject to the criticism of the other side. And that suggestion of course would apply to any position you take in relation to any of these questions. If you see fit to reverse your attitude in connection with them, you have the privilege of doing it. Now as to this, I was simply trying to make this matter certain in my own mind. I am frank to say that the result of Mr. Harrison's cross-examination, left upon my mind, was that they did not insist on this item.

Mr. Harrison: That is what the witness said.

The Master: Yes, that is what the witness said, but we under-

stand of course, that the witness cannot conclude the other side; that while he is their expert, in the last analysis it is for them to say.

Mr. Harrison: They can repudiate him altogether if they want to.

The Master: So far as this item goes, I do not care what you call this schedule, whether you call it tentative or otherwise, but so far as I am concerned, the schedules they put in here are going to bind the other side unless they show me why they should not bind them.

Mr. Harrison: You have extended them all the latitude they could ask for.

The Master: Of course all we have now is this particular item, and as I understand now West Virginia does not waive this item but insists upon its receiving such weight as the evidence they have introduced may show it is entitled to.

Mr. Lilly: We have in some cases left the amount blank, because we were not in a position to get all the information. If it is worth a million dollars as of a certain date, if it is worth two hundred thousand, or if it is worth par, that is what it should be. Mr. Hillman may have gotten the idea, or counsel, originally, that because in 1869 it was turned over to the Orange & Alexandria, that we go back to the basic date of 1861 or 1863, and whether or not it was given away later, as both counsel on the other side have said, is not material.

The Master: As far as this item is concerned, you have it to meet.

Mr. Harrison: I have it to meet?

The Master: Yes; that is, they still insist upon it, they claim it.

Mr. Harrison: I do not know whether they do or not. If they do, I wish they would give me an opportunity of examining about it.

The Master: You have the statement of the witness of course as the result of your cross-examination, and I know the impression created on your mind, and you have an idea of the impression created on my mind, but of course I cannot hold that Mr. Hillman can conclude the defendant here.

Mr. Harrison: I do not ask for that, if your Honor please.

The Master: Of course when Mr. Hillman testifies about a

fact, that is one thing; but when he undertakes to state what the position is, or what the attitude is, why that does not conclude them. If there are any admissions of that sort to be made, they are going to be made by the counsel for West Virginia, and just so with Virginia; that is, I would not take the statement of a witness on either side as binding upon either party as to such a matter.

Q. Do you know anything about the value of the State's interest in the Manassas Gap Railroad Company other than you have already testified to?

A. No, sir.

Q. The third item in our exhibit, on page 62, under Class G, is the Roanoke Valley Railroad.

By the Master:

Q. Did the Manassas Gap Railroad ever pay any dividends?

Mr. Harrison: He says he knows nothing about it.

Q. I simply ask you that one question, as far as you know.

A. I cannot recall.

By Mr. Harrison:

Q. What do you give on your exhibit as the amount of the State's holdings in the Roanoke Valley Railroad?

A. $177,402, the common stock, and $130,000 preferred stock.

Q. That is a total of?

A. $307,402.

Q. You have got those figures stated under the column headed par value or cost to January 1st, 1861, have you not?

A. Yes, sir.

Q. Did you extend them in your summary as a charge against Virginia?

A. No, sir.

Q. Why didn't you do that?

A. For the same reasons as stated at length under the Manassas Gap Road.

Q. Because of the statement made with reference to them in the answer?

A. Yes, sir.

Q. You have written opposite the Roanoke Valley stock "Given away." Where did you get that information from?

A. Act of the General Assembly, February 18, 1866, pages 333 and 334.

Q. Did you see an entry on the Journal about it?

A. Yes, sir; there was an entry which cancelled the stock.

Q. Do you know how the entry read?

A. It is an entry where stocks are written off as sold, abandoned or useless. That is the heading of the account to which they are written off.

Q. Did the journal entry to which you refer with reference to this stock read as follows: "To balance this account under Act passed February 8, 1866, Chapter 212, the road and all the property be sold to satisfy the mortgage and floating indebtedness?"

A. I do not know how the journal entry read.

Q. Were you or not instructed by counsel not to extend those items in your summary against Virginia?

A. That was my understanding, that none of the items outside of the James River and Kanawha should be extended to the summary.

Q. If they were treated however as you have treated the Alexandria Canal Company and other similar companies, they should be extended into the summary, should they not?

A. They should, yes, sir.

Q. In other words, they are just as much a proper charge against Virginia as the Alexandria Canal Company or the Roanoke Navigation Company and others, on the principle which you have charged the latter?

A. Yes, sir.

Q. Now, without taking them under inquiry one at a time. I will direct your attention to the fact that there are included in the Class C besides the items that we have just been considering, the Fredericksburg & Gordonsville Railroad, Richmond & York River Railroad, Rappahannock Company, Rivanna River Navigation Company, Smith's River Navigation Company, Slate River Company, Kempsville Canal Company, Hazel River Navigation Company, Goose Creek & Little River Navigation Company, Dragon Swamp Navigation Company and Chesapeake & Ohio Canal Company and Potomac Company, all of them shown on your Exhibit No. 7-B, page 62 and page 63 of the printed schedule, with the amounts of the State's holdings in the respective companies opposite, are they not?

A. Yes, sir.

Q. None of those are extended in your summary of charges against Virginia?

A. No, sir.

Q. For the same reason that you have given with respect to the Manassas Gap Railroad and the Roanoke Valley Railroad?

A. Yes, sir.

Q. And what you have had to say with reference to the first two and the principles upon which you have fixed value applies to the latter as well as those two?

A. Yes, sir.

By the Master:

Q. Do you know as much about the value of the $272,000 item as you know about the value of these items you have just been inquired about?

A. No, sir; I have some slight further information on that subject which consisted of the amount for which this was disposed of, that is all.

Q. That relates to the $272,000 item?

A. Yes, sir; for which the $272,000 was disposed of.

Q. And what was that?

A. $754.47.

Q. I notice that you have here on this exhibit, on page 62, this notation, Act of General Assembly, February 18, 1866. I understood Mr. Harrison, a moment ago, to refer to an Act of Assembly dated February 8, 1866, and I inferred from the character of his question that he probably had in mind the same Act. What I want to get is whether they are identical or whether there were two Acts.

Mr. Harrison: I presume they are the same. I read from the Journal F.

The Master: I want to get the right date.

Mr. Harrison: I read from the Journal entry.

The Master: That said February 8?

Mr. Harrison: Yes, sir.

Q. Where did you get your date from, Mr. Hillman?

A. We got that date from looking at the Act itself.

By Mr. Harrison:

Q. What do you say is the date?

A. February 18, 1866.

Mr. Harrison: We have it here February 8; he may be right about it. Somebody has made an error in putting down the date.

The Master: If it is the same Act, there is no question about it.

Mr. Harrison: The same Act, and the same pages are given. We have a transcript of the Act here dated February 8, but that may be a mistake. It may be February 18. I do not know that it is, but one or the other has made a mistake in taking down the date of the month.

Q. I observe on this exhibit of yours that you have opposite a great many of those lists of stocks that I have just read off "On hand." Take for example the Fredericksburg & Gordonsville Railroad Company. Do you mean by that statement on your exhibit to say that Virginia has that stock on hand?

A. According to their ledgers, yes, sir, they have.

Q. Did you see the stock.

A. No, sir; If you will look at the foot note on Exhibit 9 you will see "None of these securities representing the total, $1,028,020.18, have been inspected by us."

Q. What authority have you for saying it is on hand other than that you find the cost item of it on the books?

A. That is the supposition, that if the article had been disposed of it would have been written off the books, the same as other items were.

Q. Were not those books discarded years ago?

A. Those books were rewritten I suppose or restarted later on, but there are no entries on the books where these appear showing that they have been disposed of in any way.

Q. Do you mean to say that those items are carried on in current books of the State of Virginia?

A. I do not know whether they are or not. I only know that they have not yet been written off the old ledgers; they still remain there.

Q. Well, I will take one of them just as an illustration, the Potomac Company, that seems to be one that you have added to that schedule that is not mentioned in the answer, on page 63.

A. I beg your pardon, it is mentioned in the answer in this

way, that the Potomac Company—see page 59, supplemental answer—the Potomac Company and the Chesapeake & Ohio Canal Company are combined in one item on page 59 of the supplemental answer.

Q. Well, that is immaterial. That is included in the Chesapeake and Ohio Canal Company?

A. Yes.

The Master: There is nothing in the supplemental answer that shows that.

Mr. Harrison: No, nothing at all, it is all down as the Chesapeake & Ohio Canal Company.

By the Master:

Q. How do you get at that fact, that it is included in that item?

A. For the reason that the canals were afterwards made one, but still carried on the books of Virginia as two items, the Chesapeake & Ohio Canal and the Potomac Company.

By Mr. Harrison:

Q. Have you before you the date of the charge on the books of Virginia of the Potomac Company?

A. No, sir, I have not.

Q. The original entry?

A. No, sir.

Q. You do not know when that was made, you are not able to testify now about that?

A. No, sir; we took it as shown on the page there.

Q. You saw nothing but the original entry?

A. We took the entry as shown on Ledger B, page 191, of the Board of Public Works.

Q. You have an exhibit numbered 10, the amount of taxes found—

The Master: As to that, I have just one or two inquiries I want to make.

By the Master:

Q. The only element of differentiation between the item of two

hundred thousand odd dollars and the item Mr. Harrison has just been inquiring about, bearing upon the question of value, is this fact, that some time in 1872 the $272,000 par value of securities, was sold for $754, a little over two and a half cents on the dollar, am I right about that?

A. Yes, sir.

Q. And that is the only element involving value that differentiates that item from these other items?

A. Yes, sir.

Q. You find nothing anywhere that gives you any aid in reaching value in connection with these items that Mr. Harrison has been referring to, of any kind?

A. None whatever.

Q. And the only advantage that the $272,000 item has is that you do find something that indicates that at some date that was worth two and a half cents on the dollar?

A. It was sold for three cents per share of $100—I mean 30 cents for each $100, three-tenths of a cent. And from that was deducted the cost of sale.

Q. From the three per cent?

A. Yes, sir.

Q. It was sold at 30 cents a share, or three per cent?

A. Three-tenths of one per cent.

Q. And you do not even find any indication of that sort in connection with any of these other items which have been inquired about?

A. Nothing at all.

Q. I notice that you have here in reference to Richmond and York River Railroad Company, sold by decree of court, just about the same time that this sale took place that we are now referring to. What was the amount of that sale?

A. The Richmond & York River Railroad Company was foreclosed under decree of Chancery Court and the stock wiped out.

Q. Then the stock was not sold?

A. No, sir.

Q. The road was sold, that is what you mean by that?

A. The road was sold and the stock was wiped out.

Q. The road was sold on a foreclosure sale, and the stock was of no value, it did not bring enough to pay the mortgage, I suppose?

A. It was wiped out.

Q. Now, then, Smith River Navigation Company is another item that you have in here that I do not find in the supplemental answer; it seems to have been abandoned. That was for $4,383.12.

Mr. Harrison: It is in the supplemental answer.

Q. What do you mean by abandoned, that is what was abandoned?

A. The whole item, the Smith River Navigation Company was abandoned, it ceased to exist.

Q. Do you mean the enterprise was abandoned?

A. Yes, sir; the enterprise was abandoned.

Q. So that the expenditure was worthless?

A. Yes, sir.

Q. Is that the way you understand it?

A. Yes, sir.

Q. So that that item is evidently of no value whatever, is that right?

A. Yes, sir.

Q. When was it abandoned, prior to January 1, 1861? That is all I want.

A. No, sir, it was subsequent to that date.

Q. Well, when?

A. It was in the 70's.

Mr. Harrison: September 30, 1873.

Q. What is the fact about this Slate River Company? That seems to have been marked abandoned. When was that abandoned?

A. That was on the same date, your Honor.

Q. How does that appear on the books, that is the fact that it was abandoned? What sort of an entry did you get that from?

A. It is stocks sold, abandoned and useless.

Q. Well, do you mean that this appears under a heading of stocks sold, abandoned and useless?

A. Yes, sir.

Q. Well, now, what is there to indicate that this was abandoned instead of being either sold or useless, in the entry? I want to get at the detail of it to see just what the significance of it is.

A. Because you could tell from the fact of the journal entry itself that it was abandoned.

Q. What does the journal entry say?

A. The journal entry would show that it was abandoned.

Q. Well, does the journal entry in this particular case show that this enterprise was abandoned?

A. Yes, sir.

Q. Does it state any reason?

A. I do not recall that.

Q. What is the date of that journal entry?

A. That journal entry is the same as the other, 1873. I took that because it is upon the same ledger folio.

Q. Now, what do these two items represent that I have just been inquiring about, the Smith River Navigation Company and the Slate River Company, do they represent the amount of stock that the State held in corporations of that name, or do they represent public improvements that the State had originated and paid out that sum of money for?

A. It represents the stock held.

Q. Do you have any idea what the amount of the total stock was in each instance?

A. No, sir.

Q. Or how long the companies had been in existence?

A. I made no investigation of it, none.

Q. Or when it was originally organized?

A. No, sir.

Q. Well, you have treated that practically as of no value?

A. Yes, sir.

Q. Do you consider it as of no value, or do you think it has value?

A. I do not think it has any value.

Q. Did it have any value on January 1, 1861, in your judgment?

A. Yes, sir; it might have some value in 1861.

Q. Well, how much?

A. I could not say, sir.

Q. But on what do you predicate your statement that it had value on January 1, 1861? Is that a mere conjecture or have you anything definite on which to base it? What I want is to get some information about it, so as to see what weight to give to it.

A. That is a conjecture, your Honor, that in 1861, owing to the fact that railroads were infrequent, that stocks of navigation

and river companies would have a value, from being in operation. That is the sole basis of saying that I thought it had a value on January 1, 1861.

Q. But you have not any data that enables you to make any definite statement about it?

A. No, sir, I have not.

Q. Whether it is worth five cents on the dollar or fifty cents on the dollar?

A. I have not.

Q. Or nothing on the dollar?

A. I have not.

Q. That is simply your impression of the value that may have existed at that time, for the reasons that you give?

A. Yes, sir.

Q. Is that also true of the Slate River Company?

A. Yes, sir.

Q. Here is the Dragon Swamp Navigation Company. That is also abandoned. Does that also appear about the same time?

A. Yes, sir; it is on the same entry, Journal D, page 176.

Q. Have you any information that enables you to express any opinion as to whether that was worth anything on January 1, 1861?

A. No, sir.

Q. Have you any information that enables you to express any opinion as to the value of any of these stocks that appear on pages 62 and 63, on January 1, 1861?

A. No, sir; I have made no investigation on that line.

Q. And then you cannot give me any opinion on it?

A. No, sir.

The Master: That is all.

By Mr. Harrison:

Q. I started to inquire about your Exhibit No. 10 on the blue print, under the caption of amount of taxes, fines, etc., paid by West Virginia Counties to the State of Virginia, after June 20th, 1863.

The Master: What is the page number?

Mr. Holt: Page 50.

Q. When did those taxes accrue and become payable? Prior to January, 1861?

A. Some of them prior to January, 1861, and some of them after January 1, 1861.

Q. And they were paid when?

A. In the period between January 20, 1863, and April 1, 1865.

The Master: What page of the supplemental answer sets this up Mr. Harrison?

Mr. Harrison: It is in the summary on page 60.

The Witness: In the supplemental answer at the top of page 61.

The Master: Oh, collected from West Virginia counties: yes.

Mr. Lilly: On page 60 is the reading in regard to that, "In addition to the foregoing," etc.

The Master: It not appearing in the recapitulation, I rather supposed it would not be found there.

The Witness: Your Honor, those corrected pages 13 have been finished by my stenographer.

Q. The largest item you have on that list is $189,643.31, said to be general taxes assessed after January 1, 1861. Do I understand that you took that as a charge against Virginia as of January 1, 1861?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir; that should be in there, although the taxes had accrued subsequent to that date. But this is a little different from the former ones, from the other ones; and being a direct collection of taxes from West Virginia, I have entered it on both summaries.

By the Master:

Q. You mean by that the summary of 1861 and the summary of 1863?

A. Yes, sir; 1861 and 1863.

Q. The question now is, whether if this matter is settled and adjusted as of January 1, 1861, whether taxes assessed and collected after that date are a proper charge in that settlement.

The Master: That is what you mean, is it not, Mr. Harrison?

Mr. Harrison: Yes, sir; that is my question.

The Master: That is the question. If it is adjusted as of January 1, 1861, are the taxes that were assessed and afterwards col-

lected, or assessed and collected after that date, a proper item to take into account in adjustment as of that date. That is your question, is it?

Mr. Harrison: Yes, sir.

The Witness: Yes, sir.

By Mr. Harrison:

Q. Why?

A. For the reason that when you have made your adjustment of 1861, here comes an item that Virginia simply takes. It has got to be considered somewhere, no matter what the date of the adjustment is, whether it is 1861, 1862 or 1863.

By the Master:

Q. Well, if the statement is of a certain date, how is it that items that occur after that date have got to be considered?. That is what Mr. Harrison would like to know and what I would like to know. If the settlement is as of a particular date, how is it that matters that occur after that date are taken into account in the settlement as of that date?

A. Your Honor, it might not be considered as due on that date or as of that date. Perhaps I do not make myself clear. Having made the settlement of all these items which are due on January 1, 1861, there then occurs an item where Virginia has collected from West Virginia counties a large amount of money, which if the settlement is made as of January 1, 1861, and no mention made of that subesequent collection, it will be immediately lost sight of, and West Virginia will not have its proper credit. In order that it may not be lost sight of, in any event, having made the data for this settlement of January 1, 1861, I have mentioned that matter and put it *in toto* against West Virginia.

Q. The real question then I take it is this—

The Master: I do not want to take the examination out of your hands, Mr. Harrison, but the real question, I take it, is this—

Mr. Holt: Isn't the real question one of law?

The Master: Certainly.

Q. But the real question I suppose is this, if you were requested to state the debit and credit side of this account up to January 1, 1861, would you include items that accured after that date? That is the substance of Mr. Harrison's question.

A. No, sir, I would not.

The Master: Of course that does not settle the question; it is a question of law; but as a matter of accounting it is reasonably obvious that if you state the account as of a certain date that ends it, and that is what Mr. Harrison is trying to get into the record I take it.

Mr. Harrison: I am not dealing with a question of law but a question of accounting.

By Mr. Harrison:

Q. You have denominated those various items as taxes assessed by Virginia in West Virginia counties and paid by West Virginia counties to the State of Virginia. Please tell me how it happened that West Virginia counties were assessed for taxes by Virginia and paid money to Virginia in settlement of taxes during the period mentioned.

A. I don't know; they simply did and they were simply assessed and paid.

Q. Have you a list of the counties?

A. Yes, sir.

By the Master:

Q. And the amounts collected from each county?

A. Yes, sir; I have it in detail from each county. I have, your Honor, prepared a list of the counties—

Q. You prepared a list of the counties upon which you predicate this statement?

A. Yes, sir.

Mr. Lilly: And the amount paid by each county?

The Witness: I have not it in that form, but I have it in sufficient form to make that statement.

Mr. Harrison: I will not wait for that.

The Master: Do you want that put in later?

Mr. Harrison: Yes, I will see. I will let him check it up with him.

The Master: I am inclined to think I would like to have that in.

Mr. Lilly: I think we would too, your Honor. We will put that in later.

The Master: Because otherwise it is a trifle indefinite; Mr.

Harrison wants the counties upon which you predicate this computation. That detail must be submitted.

The Witness: I will submit that later, your Honor.

By Mr. Harrison:

Q. You say you cannot give any explanation of how it happened that West Virginia counties were paying taxes to Virginia during the period you mention there from 1861 to 1863 when they were assessed and paid from 1863 to 1865?

A. No explanation further than perhaps to state that these counties perhaps recognized their fealty to the old State of Virginia rather than West Virginia, though they were included, some of them subsequently and some at the time, in West Virginia.

Q. West Virginia did not become a state until June 20th, 1863, did she?

A. No, sir.

Q. Then all of the counties were counties of Virginia, were they not?

A. They were counties of Virginia and have been denominated West Virginia counties. They were then part of the State of Virginia until the new State was created.

By the Master:

Q. June 20, 1863?

A. Yes, sir; but I have noted them as being West Virginia counties to distinguish them from the regular Virginia counties.

Q. You mean that these counties that you have given were counties that afterwards became part of West Virginia?

A. Yes, sir.

Q. Were these taxes assessed and collected prior to 1863?

A. They were collected after 1863.

Q. Were they assessed prior to 1863?

A. Some of them were and some of them were not.

By Mr. Harrison:

Q. But your exhibit shows that they were all assessed prior to 1863?

The Master: No, it does not. He shows a period June 20, 1863, to April 1, 1865.

Mr. Harrison: That is my recollection of his testimony, that

they were all assessed prior to 1863, and were paid after that date and by 1865.

The Master: I was not clear about that and that is why I was inquiring.

The Witness: The bulk of them were assessed after January 1, 1861.

By the Master:

Q. Yes, true; but prior to June 20, 1863 were they assessed during that period? Of course it is after January 1st, 1861, now, but what I want to get is to get this a little closer.

A. I don't know the exact amounts. I can give that in my detail though.

Mr. Holt: You do not get the Master's question.

The Witness: Perhaps I do not.

Mr. Holt: Were any of these assessments made after June 20, 1863?

The Witness: Yes, sir; I think they were.

By Mr. Harrison:

Q. If you think they were I will be glad if you will be a little more specific and tell us how much.

A. I cannot tell without examining.

By the Master:

Q. You will furnish a statement showing that?

A. Yes, sir.

By Mr. Harrison:

Q. I would like to ask you if these counties that were assessed and taxed by Virginia up to June 20, 1863, or even if you found any of them assessed after that, and which paid taxes to Virginia between 1863 and 1865, if they were not within the jurisdiction of and under the government of the State of Virginia?

Mr. Lilly: Isn't that a matter of law?

Mr. Harrison: It might be a matter of law. I am not asking him for any opinion on a question of law. I would like to know if he knows that fact.

The Master: I suppose he may state the fact.

A. Yes, sir; they were under the jurisdiction of the State of

Virginia, I believe, as far as my knowledge of it goes, up to June 20, 1863.

By the Master:

Q. I would like to know upon what source you rely for your answer to that question. How is it possible for you to have original knowledge of the existing condition of things away back in 1863? I have no doubt you have a reason satisfactory to your own mind. I would like to know where you get the source of your opinion.

A. Because the State of West Virginia was not formed until June 20, 1863.

Q. Then it comes down to this, that it is not any information at all, so far as you are concerned, but that you assume that because the State of West Virginia was not organized until June 20, 1863, that the full territory of old Virginia was still within its jurisdiction, and therefore these counties were within its jurisdiction, is that it?

A. That is it.

Q. Then you do not know anything more about it than we do, but I wanted to know exactly what your sources of information were.

Mr. Harrison: He could have found all that information in the original record, where these counties are set forth by name and which were subject to the government of the State of Virginia at Richmond.

Mr. Lilly: We want to have the amount collected after June 20, 1863, that is the purpose of that charge.

By Mr. Harrison:

Q. If you were balancing accounts between these counties and the State of Virginia you would have to know how much Virginia spent in maintaining the government in those counties, wouldn't you, to balance that against the contributions that they made in taxes to her treasury?

A. Yes, sir; that would be an important point.

Q. And that you have not ascertained, have you?

A. I have put in no exhibits on that point of the expenses and taxes.

Q. Your examination showed who collected taxes in those days, didn't it? The Sheriffs of the counties collected them?

A. The Sheriffs and County Clerks.

By the Master:

Q. Would it be proper to take your total charge without qualification in the absence of information as to the public expense in the territory, in your judgment as a matter of accounting?

A. Yes, sir, it would.

Q. As covering the period between January 1, 1861, and June 20, 1863.

A. No, sir; not that period, but it would for the period which we have mentioned here, June 20, 1863, to April, 1865.

Q. But the information you have got here does not separate and segregate anything. I cannot tell anything about it, as to when, how or where. With the information you have got before me now you do not think it would be proper to take in account this charge without qualification, without the knowledge of the expense involved in the administration of these counties, as I understand it, between January 1, 1861, and June 20, 1863?

A. No, sir; not from the information which is on file.

Q. That is what I mean.

Mr. Lilly: I want to ask counsel on the other side if it is contended by Virginia that she expended money in the West Virginia counties after June 20, 1863, in administering affairs of government in the West Virginia counties?

Mr. Harrison: Yes, Mr. Lilly. As a historical fact there were a number of counties, some ten or twelve, that were included on paper as part of the territory of West Virginia that remained within the Confederate lines and subject to the government of the old State of Virginia up to the close of the war, and the only government maintained in those counties was the government of the State of Virginia, and whatever there was contributed in taxes was just like any other county in the State. But when the war ended they were then in fact under the jurisdiction of the State of West Virginia.

The Master: Was there not some question about the line at one time and how many counties were included?

Mr. Lilly: Only as to three counties. It is decided in the 11th Wallace.

The Master: As to those things, you must get the facts on the record. Of course as it stands here I am just a little uncertain.

Mr. Harrison: All those facts are in the original record, and in the schedules that were furnished they were set forth, and the assessed values were taken account of with reference to Confederate currency in those counties, West Virginia getting the benefit of the scale of Confederate value. It will all come to your Honor if you will run your eye over it but it is all cold for the present.

Mr. Lilly: The fact that Virginia collected from the West Virginia counties after June 20, 1863, $224,799.63 is not in issue is it?

The Master: You mean here?

Mr. Lilly: Yes.

The Master: I do not understand that they raise any question as to the figures and computations. I am going to put that general question covering all these schedules when we get around to them. The effect of the figures is one thing and the actual expenses is another. Of course it is easy enough to see that taxes that may have been assessed between January 1, 1861, and June 20, 1863, and that were assessed after June 20, 1863, there may have been a very profound distinction as to what the facts were. I suppose that the jurisdiction in which the territory is, is subject to discussion during that period, and of course they are entitled to the benefit of the public expenditures, and if they did not happen to be collected during the period, the State is assumed to have gone on and discharged its public obligation, and it may not have collected revenues necessary to pay the expense of these obligations until a later period, notwithstanding that the taxes assessed during a certain period might perhaps be properly considered applicable to the public expenses during the same period. Of course I do not know how all these things may work out, but what I want is details and facts showing all these things, and then you can reach your conclusion, and your schedules I understand show that?

The Witness: Yes, sir.

By the Master:

Q. I would like to have you say as far as you know when these taxes were assessed.

A. We will have the details in a few minutes and I can county them, put them by counties in a very few minutes more.

The Master: I am going to suspend in five or ten minutes or if it will be more convenient for Mr. Harrison I will suspend now.

Mr. Harrison: No.

The Master: I will go on then until four o'clock

The Witness: I think we can have them in about ten or fifteen minutes.

The Master: It will be better to have them right at this point, and if they want to pursue it on cross-examination it will be right in the place where the subject matter appears in the record.

By Mr. Harrison:

Q. Bearing upon this question I would like to inquire if you determined through your investigation or inquired into the question of whether Virginia, the old State, expended any money on works of internal improvement in West Virginia after January, 1861. I refer particularly, as that may have come under your notice, to the Covington & Ohio Railroad, and you may confine your answer to that work. I am speaking now of after January 1st, 1861.

The Master: And the territory now within the State of West Virginia?

Mr. Harrison: Yes, sir; the territory which became a part of the State of West Virginia.

A. No, sir; I made no investigation regarding that point.

Q. Your analysis of the disbursements by the Board of Public Works, January 1st, 1861, and June 20th, 1863, would show the expenditures the State of Virginia had made on that work, would it not?

A. No, sir; it would not.

Q. Do you mean to say you just took the totals?

A. No, sir; I did not take Covington & Ohio at all.

Q. I am talking now about the cash account of the Board of Public Works.

A. I thought you were still on the Covington & Ohio.

Q. I said, would not your analysis of the cash account of the Board of Public Works, January 1st, 1861, and June 20th, 1863,

show whether any sum had been expended after January 1st, 1861, on the Covington & Ohio Railroad.

A. I say I do not know. It would not show it.

By the Master:

Q. What is that that does not show it?

A. My analysis would not show it.

The Master: I understand. I did not know but what you referred to the books as not showing it.

Mr. Harrison: No, all I wanted to know was whether he analyzed the cash account of the Board of Public Works as of those dates. If he did not analyze it of course he could not tell.

The Witness: No, sir, I did not.

By Mr. Harrison:

Q. Now will you please state the total amount, according to your schedules, of West Virginia's claim as a set-off against her liability to Virginia as ascertaned by the decree of the Court fixing the principal sum for which she was liable?

Mr. Hogg: As of what date, Mr. Harrison?

Mr. Harrison: Either January 1st, 1861, or June 20th, 1863, or any other date.

A. January 1st, 1861, total offered for consideration is $29,611,784.62; 23 1-2 per cent. of which is $6,958,769.39; to which, if we should add the item which is under discussion, as shown upon Exhibit No. 10, $224,799.63, would make a total of $7,183,569.02. This is the total shown by the summary; it does not include any proportion of the items on pages 61, 62 and 63 of the printed record.

Q. Is the statement you have just rendered us on the basis of the changes you have made since your cross-examination began?

A. Yes, sir.

Q. In your January, 1861, schedule?

A. Yes, sir.

Q. Those changes increased the amount of your summary several millions of dollars, didn't they?

A. Yes, sir.

Q. Can you give us the amount, just approximately?

A. I can give it to you exactly in a moment; $3,547,919.08,

subject to the application of course of the 23½ per cent; that is the total gross charge was increased that much.

Q. The figures you have just given us I do not mean the last figures, but the statements you have just made show that West Virginia's claim against Virginia is $7,183,569.02. Does that mean as of January 1, 1861?

A. Yes, sir.

Q. Is that final? In other words, can we rely upon that now as final?

A. No, sir; I have stated that it does not include any items from pages 61, 62 and 63.

Q. Are we to understand then that you cannot give us a final statement of West Virginia's claim against the State of Virginia?

A. Yes, sir; I can.

Q. You say you can?

A. Yes, sir; I can.

Q. Well, please give it to us.

A. The amount to be prorated on the basis of 23½ per cent. is $31,716,784.62, which when prorated, will give as the West Virginia proportion $7,453,443.48; to which, if we add the items on Exhibit No. 10 of the present record, viz., $224,799.63, will give us a total claim of West Virginia of $7,678,243.11.

Q. How have you increased the item since your last answer?

A. By adding the amount of the State's holding in the Manassas Gap Railway Company of $2,105,000, to the totals which have already been mentioned.

Q. Have you added any other items in Class G?

A. None, outside of the James River and Kanawha and the Manassas Gap.

Q. Why didn't you add the rest of them if you added those?

A. Because I was instructed by the attorneys for West Virginia that no claim would be made on account of the other items.

By the Master:

Q. Now what is included in the other items?

A. Page 59—

Q. I would like to have those mentioned right there.

A. Roanoke Valley Railroad Company—

Q. Just make the statement this way: That is correct, I was

instructed by the attorneys for West Virginia to state that no claim has been made on account of the following items.

A. I was instructed by the attorneys for West Virginia to say that no claim has been made on account of the following items, pages 62 and 63 of the printed record: Asset No. 3, Roanoke Valley Railroad Company stock—shall I mention the amounts, your honor?

Q. No, you need not bother about that.

A. Asset No. 4, Fredricksburg & Gordonsville Railroad Company stock.

Item No. 5, Richmond & York River Railroad Company, stock.

Item No. 6, Rappahannock Company stock.

Item No. 7, Rivanna River Navigation Company stock.

Item No. 8, Smith's River Navigation Company stock.

Item No. 9, Slate River Company stock.

Item No. 10, Kempsville Canal Company stock.

Item No. 11, Hazel River Navigation Company stock.

Item No. 12, Goose Creek & Little River Navigation Company stock.

Item No. 13, Dragon Swamp Navigation Company stock.

Item No. 14, Chesapeake & Ohio Canal Company stock and Potomac Company stock.

Mr. Holt: We may be wrong, your Honor, but we have always looked upon that as a mere junk pile, that part of it.

The Master: You are merely throwing it off the sidewalk now.

Mr. Holt: Well, yes.

By Mr. Harrison:

Q. Am I correct now in saying that you have stated West Virginia's claim against the State of Virginia as of January 1, 1861?

A. Yes, sir.

Q. To be $7,678,243.11?

A. If you will, please make that 244.02?

Q. Then the correct figures are $7,678,244.02?

A. Yes, sir.

Q. That you say is final and not subject to change? We can rely upon that?

A. Yes, sir.

Q. Now what is the amount of her claim as of June 20, 1863?

The Master: Before you leave that I would like to make this suggestion, the schedule that I have, page 51, does not agree with this aggregate, and I simply suggest that they take this back and revise it, and hand me a schedule that is correct, with the final amount.

The Witness: Page No. 51 is the page we are just coming to.

The Master: I see, I was confusing that for the time being as 1861.

A. While we are computing this, I will just say that I made a slight correction on account of a clerical error in this computation, and if it is all right I will just give the stenographer the corrected figures for that, instead of the other figures which are put in. It should be $7,678,244.02. Now the total to be prorated upon the basis of 23½ per cent to West Virginia amounts to $33,478,100.77; 23½ per cent. of which is $7,867,353.68; to which if we add the total of Exhibit No. 10, the tax collection exhibit, $224,799.63, we would have a total of West Virginia credits of $8,092,153.31, as shown on page 51 of the blue print.

The Master: That does not agree with mine, so just please revise it and I will put it on my file.

Mr. Harrison: Every time he figures it it gets bigger.

The Master: I guess you are getting the atmosphere so chilly that this snow ball rolls up.

The Witness: Your Honor, may I have ten minutes to get that tax matter straightened out?

The Master: I think perhaps what you had better do is to straighten that out by to-morrow morning. Take your time and straighten it out between now and to-morrow morning. I would rather do that than to delay here, and let them go along with their examination.

Q. You have not amended your figures since you gave $8,092,153.31 as the amount of West Virginia's claim against Virginia for June 20, 1863, have you?

A. No, sir.

Q. And that is final and not subject to change?

A. Yes, sir.

Q. Have you taken any account in your computations of the amount of cash that West Virginia received upon its organization from the State of Virginia?

A. No, sir; I have filed no exhibits on that point.

Q It is all in the original record. You are aware of that fact, are you not, that all of that information is contained in the original record?

A. I am not aware of that. I am aware of the fact that there was some money passed.

Q. You are aware of the fact, however, that there was some money that did pass to West Virginia on the organization?

Mr. Lilly: Can you give us some record of where that appears?

Mr. Harrison: Not now, but I can do so.

Q. You have taken no account of that, you say?

A. I have not taken it into account.

Mr. Harrison: Plaintiff's Exhibit G—1, page 819 of the original record, will show the payments to West Virginia on her organization, by the State of Virginia. Now an exhibit was handed us this morning, if your Honor please, a paper, I do not know whether it is an exhibit or not, undertaking to show some fact in connection with the cash account of one of the railroads, the profits, I have forgotten now how it was described—I think it was the running account of the Farmer's Bank. We have not had an opportunity to examine that, and I reserve the right to cross-examine on that when I have examined it. With that statement, and with the further understanding that if we should find that we have omitted something that we want to inquire about, why I assume we may cross-examine further—

The Master: Yes, anything that occurs to you at any time that you want to examine about, you may do so.

Mr. Holt: Now, your Honor, we are in this situation with respect to the re-direct examination; we have made some notes, and the cross-examination has been quite lengthy, and we would like to have a little opportunity to go over what we have, so that we may press into a small compass any queries we may have to make. I expect we could make some time even by letting it go until morning. I think half a dozen questions will cover what we want if I understood what he said, but of that I am not quite positive.

The Master: You are not in a position to make any progress on other lines?

Mr. Holt: I do not believe I am. Here, by way of illustration, this was the thing that I had in mind; I have not looked at it—

I have looked it over, but I want to think about it a little bit.

The Master: What have you to say as to that suggestion, brother Harrison?

Mr. Holt: I think we could promise to be through with Mr. Hillman in the morning in three-quarters of an hour or an hour's time, and then hurry on to the matters outlined this morning.

The Master: I think both sides ought now, so far as it is possible, to finish the examination of Mr. Hillman, because it does not seem to me that he ought to be kept here under this embarrassment any longer, and of course conditions might develop that would make it absolutely neccessary for Mr. Hillman to leave the hearing at once. Of course we hope that that won't be the case, but in any event if it is feasible I think both sides ought to get through with Mr. Hillman at the earliest possible moment, on his account and also on our account. I do not want to have the hearing postponed again on account of any inability to reach Mr. Hillman. What have you to say about that, Mr. Harrison?

Mr. Harrison: I have no disposition in the world to make any objection to Judge Holt's request.

Adjourned to September 9, 1914, at 9:30 A. M.

BEFORE THE MASTER,

Richmond, Virginia, September 9th, 1914.

Present: The same counsel as on yesterday.

The Master: Mr. Hillman submits this morning and makes a part of the record his detail schedule in relation to the gross item of $224,000 for taxes collected from West Virginia counties, and I would suggest in relation to that that if there is any cross-examination, if the counsel can in looking it over for a moment or two determine whether there is, if there is any cross-examination in relation to that I will have that take place before Judge Holt goes on with his re-direct examination, so as to have the whole cross-examination together.

The schedule submitted by Mr. Hillman is as follows:

Amounts of Taxes assessed by the State of Virginia and paid by West Virginia Counties to the State of Virginia from June 20, 1863, to April, 1865.

LAW PROCESSES.
1863 and Subsequent.

Counties.	Amounts.
Pendleton	$ 34.20
Greenbrier	350.15
McDowell	13.34
Mercer	38.83
Jefferson	46.71
Monroe	114.00
Pocahontas	57.00
	$ 654.23

REDEMPTION OF LANDS.
1863 and Subsequent.

Monroe	$ 73.26	
Greenbrier	42.53	
McDowell	7.79	
	$ 123.58	

GENERAL TAXES, 1863, AND SUBSEQUENT.

Mercer	$ 31,206.46	
Monroe	45,488.57	
Greenbrier	74,664.07	
McDowell	1,200.00	
Pendleton	15,400.00	
Gilmer	3,317.24	
	$171,276.34	$172,054.15

Delinquent Taxes & Forfeited Lands. NO DATES. Being judgments on bond of Commissioner's of delinquent and forfeited lands.

Gilmer County	$3,936.13	
Kanawha County	699.17	
Lewis County	3,575.00	
	$8,210.30	8,210.30
	Total	$180,264.45

Continuation of the examination of

CONWAY W. HILLMAN.

By The Master:

Q. This schedule, Mr. Hillman, does not separate the as-

sessments unless it be a fact that none of these assessments were made prior to 1863. If that be the fact, the schedule is all right, but if any of these assessments as to which the details are shown were made between 1861 and June 20th, 1863, that ought to appear. Were they, as a matter of fact?

A. No, sir.

Q. All made after June 20th, 1863?

A. Yes, sir, that is the 1863 taxes are payable in September, 1863; I do not know the date of the absolute levy of the taxes.

Mr. Hogg: We will put the statute in on that so that your Honor may have the benefit of the statute as to when they are payable.

Q. These items do not include any taxes that were assessed prior to the assessment for 1863?

A. No, sir. I call your attention, your Honor, to one item, which is the last item, delinquent taxes and forfeited lands, no dates, being judgments on bond of Commissioner of Delinquent and Forfeited Lands. I do not know the dates of those, and therefore I have entered them as a special item, and they are subject to any criticism because they have no dates on them.

Q. When do they appear to have been paid; that is, when were the redemptions made?

A. They were paid in 1864.

Q. The chances are at least even that those taxes were assessed prior to 1863. I do not know what the machinery is.

A. Yes.

The Master: We cannot tell until we get the statutes. Of course they pursued the method of delay, I suppose, and then sold in time to preserve the liens and all that. However, that is a matter for cross-examination. Do you wish to cross-examine in relation to that now, Mr. Harrison?

Mr. Harrison: I do want to examine him on that, but I do not know whether I will have a chance at this moment. I expect I had better wait, if your Honor please.

The Master: Under those circumstances, if it is agreeable,

Judge Holt, I would like you then to proceed with your re-direct examination.

Mr. Holt: I have nothing to ask on that particular schedule unless they have. If they have any cross-examination, then I will have some examination.

The Master: Take up your re-direct examination, gentlemen, then.

The Master: I want the transcript of the proceedings of yesterday, because when we get on to it I want to refer back to Judge Holt's statement as to the character of proof, etc., so as to follow him along when he gets around to that branch of the case.

Mr. Holt: We have made a memorandum, your Honor, of the outline, which I will hand you by the time I get to it.

The Master: All right.

RE-DIRECT EXAMINATION.

By Mr. Holt:

Q. Mr. Hillman, upon what theory and for what purpose were your schedules heretofore filed prepared?

A. Book value.

Q. Do you mean by that for the purpose of showing the book value?

A. Yes, sir.

Q. If the books of a corporation be correctly and truly kept, what should the book value represent?

A. The actual value of the security in question.

Q. That is bound to be so, is it not?

A. Yes, sir.

Q. What do you understand by market value?

A. That is what the stock has been selling for.

Q. And market quotations then represent the sales, do they, or the prices at which sales were made?

A. Yes, sir.

Q. In making up your schedules for the purpose of ascer-

taining book values, did you take into consideration dividends declared and paid?

A. No, sir, I did not. I made an entry, however, of amounts of dividends declared and paid, on the sheets whereon I showed book value.

By The Master:

Q. That is, you have a statement of the dividends independently of the statement showing book value?

A. Yes.

The Master: That is what you meant, Judge, is it not?

Mr. Holt: Yes, they did not enter into the book value computation; they were put there for any purpose it was decided that we might want to use them for.

By Mr. Holt:

Q. Suppose that a stock should be considered at par that pays a six per cent. dividend, what premium would it bear upon a seven per cent. dividend?

A. 16 2-3 per cent., or the stock would be worth $116.66 for every hundred dollars worth.

Q. Upon a 7½ per cent. dividend?

A. Each $100 share of stock would be worth $125.

Q. A share of the par value of $100?

A. Yes, sir.

Q. What an eight per cent. dividend paying stock?

A. A share at par value of $100 would be worth $133.33.

Q. May the market value be the same as the—

The Master: Judge, do I understand from him that that in his judgment would be a demonstration of its selling price, or what would be the price computed upon that basis?

The Witness: The price computed upon that basis.

The Master: That is what I supposed you had in mind.

Mr. Holt: Yes.

Q. May the market value be the same as the book value of the stock?

A. It may; yes, sir.

Q. Is it necessarily the same?

A. No, sir.

Q. It may be above it or below it, as I understand it?

A. Yes, sir.

Q. Upon what does the market value of stock depend as distinguished from its book value?

A. It depends upon the demand and supply of the stock, and the conditions of the money market at that time.

Q. What do you mean by market quotations on stock?

A. I mean quotations which are made from day to day on stocks which are actively dealt in and are, you might say, on the market for continuous sale and purchase.

Q. Are they or are they not subject to certain fluctuations, market values?

A. They are, yes, sir.

Q. May those fluctuations take place without any change in the real value of the property?

A. Yes, sir.

Q. May not, by way of illustration, Northern Pacific be 100 in the forenoon and only 40 in the afternoon, without any change in the plant or earnings of the property or company?

A. Yes, that could be.

The Master: I suppose those are matters of common knowledge, when we come right down to it.

Mr. Holt: Yes, sir.

The Master: That is, at least I am situated where I hear more or less of that; and I happen to be the assignee of a bankrupt brokerage concern.

Q. Upon cross-examination yesterday, Mr. Hillman, with reference to your schedules upon the subject of banks your attention was called to a report of one of the banks accompanying the balance sheet that had been utilized by you, wherein the statement was made that there were $100,000, as I recall it, of bad debts and $50,000 of doubtful debts. Do I get the amount correct?

The Master: I do not think you get the amount correct. I

suppose your question is general. I think the doubtful debts was the largest item and the bad debts the smallest; but, however, that is near enough I suppose for the purposes of your question.

Q. Well, take the Farmers' Bank of Virginia, the bad debts seem to have been reported at $70,000 and the doubtful at $40,000. Now, was there anything in the bank balance utilized by you to show whether those debts were included in the asset column?

A. Nothing.

Q. There was no item in the balance sheet designated then either as bad or as doubtful debts?

A. No, sir.

Q. What would be the natural presumption if an officer would accompany his balance sheet with a report showing bad debts, as to what had been done with the bad debts, in banking?

A. The presumption would be that they had been charged off from his assets.

Q. How about the doubtful debts?

A. They would be probably allowed to remain.

Q. For what reason?

A. For the reason that they are a possible asset, and until they become worthless it is not probable that they would be charged off.

Q. In other words, the very next year they might become good?

A. Yes, sir.

Q. And they would not be charged off until they had been determined to be bad?

A. That is the presumption, yes, sir.

Q. Now, in your schedules upon these same banks, in the balance sheet utilized by you, or balance sheets, there is an item, profits of institution or profits of the institution. What is the exact language used?

A. Profits of the institution.

Q. And you stated on yesterday upon cross-examination, as

I recall, that if the sum of money set down under that heading represented the whole of the profits of the institution for that year, that then the dividends declared were in excess of the profits named. Was that true?

A. Yes, sir.

Q. Have you since examined that account or balance sheet and analyzed the item profits of the institution with a view of determining whether or not it was a running account?

A. Yes, sir, I have.

Q. What conclusion did you reach upon that subject?

A. That the account headed profits of the institution is a running account.

Q. Have you prepared a schedule at the request of the Master in an effort to demonstrate that position?

A. Yes, sir, I have.

The Master: That schedule is already in.

Mr. Holt: It was not marked in any way. I want to have him explain it now, if he can.

The Master: If it is in the record, I would not duplicate it, if it is in the record already.

Mr. Holt: That is true.

The Master: Unless the stenographers have failed to follow my directions.

Mr. Holt: I want to get it marked in some way; I do not want to duplicate it at all.

The Master: I have no objection to your marking the schedule, but I would not duplicate it in the record.

Mr. Holt: That was not my purpose.

Q. Was that schedule filed by you on yesterday?

A. Yes, sir, it was.

Q. Do you recall whether or not it was marked as any particular exhibit?

A. I do not think it was marked, I do not recall any such marking.

The Master: It was not marked. You may have it marked, it you want to.

Q. This exhibit covered how many of these banks?

A. Two of them.

Q. What were they?

A. The Farmers' Bank of Virginia and the Exchange Bank of Virginia.

Q. Will you mark this exhibit Defendant's Exhibit No. 13?

A. I file this and mark it Defendant's Exhibit No. 13, 1861.

The paper was admitted in evidence and marked Defendant's Exhibit No. 13, 1861. September 9th, 1914, C. B.

Q. What do you mean now by a running account, Mr. Hillman?

A. An account to which the profits of the institution would be credited from time to time, and to which there would be made charges on account of dividends paid or on account of bad debts charged off, or doubtful debts charged off, if any such would be charged in the course of their business.

Q. And it is debited with charges from time to time?

A. Yes, sir.

The Master: He does not go quite so far as to say that, he infers the existence of an account of that sort.

Mr. Holt: I am speaking now of a running account generally. I am going to take up the running account as applied to this bank directly.

The Master: I understand that as a result of his computation he assumes there must have been a running account; he never has seen a running account; but on that assumption he assumes also that the running account contains these items back and forth. Am I not correct about that? He stated on his examination the other day that he had never seen any such account; he now assumes that it existed; and if it existed it had these features.

Mr. Lilly: The Judge was asking him about a running account generally.

Mr. Holt: And then I wanted to fit this to his description of a running account.

Q. Mr. Hillman, will you take Exhibit No. 13 and in a brief manner, and according to your own ideas, explain how this ex-

hibit demonstrates the profits of the institution to have been a running account.

A. Yes, sir. Farmers' Bank of Virginia, January 1st, 1859, as shown on page 24 of document 14, the report which we have been considering in the banks, it shows that this bank had a surplus and dividend fund of $343,477.53, and had profits of the institution $166,695.72, a total available for the declaration of dividends or applicable to the declaration of dividends of $510,173.25. It has also been shown, according to our bank exhibit, page ——.

The Master: If there is nothing in this, Judge, except mere repetition of what is in the schedule, why doesn't it cover your whole ground to have him state that the schedule accurately gives his computations, unless you desire some elaboration of the schedule? If he is simply reading it, we have got it all in the record now. It does not help me any to have him repeat it, unless you have something in addition to what he has already explained.

Mr. Holt: I thought perhaps his going over it would suggest something to me and suggest some question that you might want to ask in connection with it.

The Master: I have already gone over it as far as I am concerned. I think I understand fully his modus operandi; but still I do not want you to limit your examination, except it does not seem to me that it will help any by simply having him read the schedule. If he has something in addition to what he has on the schedule, that might be important, but so far as reading is concerned, I have already read it and his re-reading it does not do me any good.

Mr. Holt: My object was to take only one bank. I did not intend to prolong it by going into the Exchange Bank, which is the same thing.

The Master: I do not object to your proceeding, Judge, in your own way, except I was simply making that suggestion in the interests of saving time. Why won't this examination do, Judge—excuse me if I have disturbed your train of thought—I was going to say why would not this cover it? Of course he has this and I have it, and if there is anything by way of ex-

planation that it is important to add in addition to what he has stated, why does not that cover your whole ground? Still, if you prefer to have him go over it, I shall not object.

Mr. Holt: I do not, if the Master is satisfied.

Q. I will ask you whether or not this Exhibit No. 13 explains itself?

A. Yes, sir, it does.

By The Master:

Q. Is there anything that should be stated in addition to what you have already put in the record, in order to make it intelligible, and if there is, we shall be very glad to have you state it; but if you have covered the whole ground, that exhausts the subject.

A. Yes, sir, one little item, if they will please correct my subtraction under the Exchange Bank of Virginia of $274,000 and $359,000, and leaving $285,000 instead of $85,000.

By Mr. Holt:

Q. Correct your exhibit then according to the fact.

A. That is all.

Q. Now, are the figures on that exhibit correct?

A. Yes, sir, they are.

Q. With that correction?

A. Yes, sir.

By The Master:

Q. You want to change the $285,000 to $85,000?

A. Yes, sir.

Q. That is obvious enough, but I did not notice it, though.

A. I did not until I happened to hit it this moment.

The Master: It is a clerical error, obviously, but still it ought to be corrected. You are right about that.

By Mr. Holt:

Q. Also, in your cross-examination relative to these banks, or upon the subject of these banks, Mr. Hillman, you were asked several questions concerning the designation of an item as profit

and loss account, and also criticised, we might say, for putting the word contingent into the profit and loss account. Will you explain that and tell the Master why you did that, where you got it from and whether or not the bank did it, and if so, in what year it began to do it?

A. Yes, sir. On pages 8 and 9 of the Second Auditor's report, January, 1860, we have the general state of the Bank of Virginia wherein there is an item denominated profit and loss showed for 1859 and 1860, January 1st of each year, which item of January 1st, 1860, is $337,455.84, which, when it is carried over into the next year on pages 6 and 7 of the Document No. 14 of the next year, is called surplus and contingent fund; the same amount, $337,455.84, and carried in that same column for 1861, is the $322,549.39, which I had denominated profit and loss and for which I was criticised. The reason that I did not make that change in the notation was that I have set these three years up in consecutive columns, putting the notation right down on the first column and then followed it with 1859, 1860 and 1861, and of course I had not changed profiit and loss, seeing that the same amount was carried through.

By The Master:

Q. Your suggestion is that the designation of this column as profit and loss did not originate with you, but it did originate in the report of this bank in 1860?

A. Exactly so.

Q. And that the modification of items in 1859, and that the change in description followed along on that same item?

A. Yes, sir.

Q. And your suggestion is that you followed the first description and did not make the modification that appeared in the reports; that covers that, doesn't it?

A. Yes, sir.

Q. That is what you mean by that?

A. Yes, sir. The same can be followed, if necessary, with the Exchange Bank of Virginia.

Q. You say the same facts appear?

A. Yes, sir.

By Mr. Holt:

Q. I believe you stated that you got these figures that you have just now been discussing from the Second Auditor's report of Virginia?

A. Yes, sir, Document No. 14.

Q. Is that the source of all the matters you have set down in your schedule concerning these banks?

A. Yes, sir.

Mr. Holt: I believe they may ask him again.

The Master: You are through with your re-direct examination?

Mr. Holt: Yes, sir.

Mr. Harrison: Most of his testimony relates to matters that have been already fully covered by the cross-examination, and we will not ask more than one or two questions.

RE-CROSS EXAMINATION.

By Mr. Harrison:

Q. Referring to your Exhibit No. 13, as I understand you, you have assumed that the balance sheet of the Farmers' Bank of Virginia shows that the profit account was a running account?

The Master: Profits of the institution.

Q. The profits of the institution was a running account. If that is true, why don't your figures on your exhibit $273,855.75 and $331,040 agree?

A. That is just the reason, that we show that it is a running account; because they do not agree proves that it is a running account.

Q. Do you know why they do not agree?

A. I do not know that, but I can probably state the reason, that the dividends are payable semi-annually.

Q. If you do not know, how can you say?

A. I cannot say.

Mr. Holt: He suggests a reason, however, which we think he is entitled to do. Of course you will take it for what it is worth.

The Master: Well, I understand it to be his opinion; I do not understand he has any basis for stating that he knows it to be a fact, but it is his conclusion from the conditions which he believes.

Mr. Lilly: It was not his opinion that the dividends were paid semi-annually; he states that as a fact.

The Master: I understand that, but I am speaking now with reference to the running account.

Mr. Harrison: That is all we want to ask him.

By The Master:

Q. Is it your idea that this running account, which you assume undoubtedly existed in order that this result may appear in the trial balance, had credited to it from time to time profits as they accrue? I understood that to be your statement.

A. Yes, sir.

Q. I am not quite certain that I understand it. How do you understand the profits were ascertained from time to time, that they would take an individual transaction and reckon the profits upon that transaction and credit the profits upon that transaction to this running account; is that the way you understand the books were kept?

A. Yes, sir; they would be kept through what they would call their interest and discounts, and exchange accounts. Those are the principal items of profits in banks.

Q. Well, your idea is that the individual items, as they developed and occurred in connection with the business, would be transferred to this account?

A. Not individually; no sir. They would be first transferred through the medium of the interest account, discount account and premiums on exchange, and then the total every six months of those taken and transferred to profit.

Q. Well, then, would the profits be transferred from time to time, or only at the expiration of a period of six months, which do you mean?

A. At the expiration of periods.

Q. Well, what periods?

A. I should say every six months; it might possibly be quarterly.

Q. What gives rise to the assumption that it might be done quarterly? I want to get your idea of the method of bookkeeping that produces this account.

A. In the bank statement which we have examined there is a notation on document No. 14, page 8 of the 1861 reports, wherein certain items are marked with a star, and below it says, "The acts of the legislature passed in 1856, March 17th, extending the jurisdiction of most of the banks in the state, require that each quarterly statement shall give amounts on the first day of each month in the quarter under the heads marked star." I assumed from that, that quarterly statements were compelled, and that therefore these profits would be entered quarterly.

Q. Then when you say in your statement that from time to time these profits would be credited, you mean there were stated times, either provided by law or by the practice of the bank, when these items would be summarized in one account and the result carried to this account you have in your mind—am I right about that?

A. That is right.

Q. I got the other impression from your statement, that there was a sort of a running arrangement, you calling it a running account and then stating that the credits were made from time to time. But your opinion is that there was probably an account of the character that I have just now described?

A. Yes, sir.

Q. In other words, you do not see any way in which this balance could have been carried along without the existence of an account of that sort; is not that what it comes to?

A. That is right.

Q. Now, do I understand you this morning to say that in your judgment the book value which you have shown is the equivalent of actual value?

A. Yes, sir.

Q. Do you mean by actual value liquidating value?

A. I beg your pardon, the book value which I have shown. You will recall that on several of my exhibits where I establish the book value I was without the data for the book value and had to estimate the earnings which had accrued. With that exception, yes, sir.

Q. I am only calling attention to this now as a general proposition. I understand it is subject to such exceptions as may appear in the book, that do not come within your general proposition. Now do I understand it to be your opinion that the book values that you have given, except in these cases to which you now refer, is the equivalent to the actual value of the stock?

A. It is the equivalent to the actual value of the stock.

Q. Now, I want the actual cash value—I want to know what you mean by actual value. Somebody has got to pay for this, that is, if the contention is sound, and there is nothing of any use to me here unless it tends to show to me what this is worth, and what somebody must be charged for it. Do I understand you to take a ground that the book value is the equivalent of the actual cash value that Virginia should account for? That is the point with me.

A. Yes, sir.

Q. Now, then, that is the liquidating value, is it not?

A. Yes, sir.

Q. Your book value is a mathematical computation upon these figures given here of what that stock would produce mathematically?

A. Yes, sir.

Q. Without any allowance for bad debts or failure to realize on the assets, or anything of that sort?

A. Yes, sir.

Q. Now, take for instance—I want to get your idea of this —in the first place I will take the Richmond, Fredericksburg & Potomac Railroad Company; that is Exhibit No. 4—

Mr. Holt: Will your Honor permit me to interrupt at that point just a moment?

The Master: Yes.

Mr. Holt: You say without taking into account bad debts or anything of that kind? You will notice that my question was predicated upon this theory, that where the books are correctly kept the book value is the actual value. If they have not charged off bad debts, why the books have not been correctly kept, that is all.

The Master: I noticed your question and had it in mind, but that does not go far enough to help me. I want to go farther.

Q. Now, in the first place, I will take the Richmond, Fredericksburg & Potomac Railroad Company, your book value is predicated on the assumption that those assets on liquidation would produce precisely the sums they are mentioned at in the aggregate, is not that right?

A. Yes, sir, that is right.

Q. Do you think that is a safe rule for me to take in determining the value of that stock and what Virginia should be charged for it; is that your judgment, on the basis of its actual value?

A. In case of the Richmond, Fredericksburg & Potomac?

Q. Yes, it applies to all of them.

A. Yes.

Q. In the first place, that involves actual liquidation at the precise sum fixed on the assets. Is there any cost involved in liquidation, or does not that enter into it?

A. Yes, sir, there is a cost involved in liquidation, undoubtedly.

Q. What would that be in connection with the Richmond, Fredericksburg & Potomac Railroad; what would be the cost of a liquidation of a road like that, with $2,566,331.71?

A. I should say it would cost five per cent.

Q. Well, ought that to be taken out or ought it to be considered a part of the assets in determining the actual value that you ought to charge to Virginia?

A. I would take that out.

Q. Then your book value is not the actual value, is it, as to that item?

Mr. Holt: Well, I would submit this, your Honor, if you will pardon me again. In the case of the Richmond, Fredericksburg & Potomac it would not make one particle of difference, for this reason, that the Richmond, Fredericksburg & Potomac stock is still owned by the State of Virginia, and its income and dividends are enjoyed by her. It is not going through a process of liquidation. Its value as of a certain date, 23½ per cent. thereof must be taken. If you were to go and liquidate it to-day you will find it is worth $200 a share, or maybe $350. It is a pretty live asset, that road is.

The Master: I am simply using this as an illustration.

Mr. Holt: I am simply trying to help, and I know that your Honor is trying to help everybody.

The Master: I want to get the basis of this conclusion that the book value is the actual cash market value.

Q. You concede then that five per cent. should be deducted from the assets in determining the actual value, or don't you?

A. I think it would cost that amount to liquidate it, yes, sir.

Q. Well, do you concede that it should be deducted? You have conceded it—do you still stand by that concession?

A. Yes, sir.

Q. Then, if that is true, the book value is not the actual cash market value as to that item; that is right, is it not?

A. That is right.

Q. Then your actual cash value proceeds upon the assumption, in connection with the Richmond, Fredericksburg & Potomac Company, that in case of liquidation the road could realize $2,002,331.41, which had been put into the construction of that road and property. Now, what have we before us to show that that is worth that sum of money, and what have you on January 1st, 1861? What I want to get at is what have you got here that satisfies me that in case of the liquidation of that company on January 1st, 1861, that sum could be realized upon that expenditure?

A. The only thing is that that being the cost of the road and the property, that it could not be duplicated for less than that sum.

Q. Well, now, do you assume that to be a fact?

A. Yes, sir.

Q. How long had the road been in existence?

A. The road had been in existence at that time some thirty years.

Q. Well, now, without knowing anything about the manner in which the accounts had been kept, and assuming that they were kept properly, I do not know what that may mean—

Mr. Holt: Is not that the necessary assumption?

The Master: I do not know; I do not know what you put into the word "properly." That is what I have got to find out. "Properly" may cover a vast multitude of things. Of course we do not know whether there was any depreciation charged off on this road.

Q. Don't you think the presumption is that this sum is the exact cost, without reference to depreciation, without any knowledge of what was done? What do you think about that?

A. In case of the Richmond, Fredericksburg & Potomac, no, sir, I do not think it was the exact cost.

Q. Now, why don't you think so; what is there in this record that will justify me in assuming that it is not the exact cost, and what do you know about this road that will enable me to safely conclude that this aggregate of $2,002,331.41 is not the total cost of the construction up to date; what have you got to show me that I can predicate an opinion on in saying that that sum of money would be realized upon that asset?

A. There is nothing in the record so far.

Q. Does that mean that your suggestion in that line is pure conjecture?

A. No, sir, it does not.

Q. What have you got outside of the record that you can put in that will enable me to say as a fact that that represents the total expenditure or that it does not represent the total expenditure; what have you that will enable me to make that conclusion?

A. From time to time, as I ran along through these accounts I simply glanced over the cost of road and equipment and noted its increase from year to year, mentally. It increased but a slight amount each year, while in the body of reports there were from time to time noted considerable improvements that had been made to the road, which indicated to my mind that the expenditures on the road and on its equipment were greater than the actual amounts by which they had increased the cost of the road.

Q. I wish you would put into the record details which you think will justify me in concluding that $1,531,238.40 is not the total cost without any allowance for depreciation. I would like to have you look the records over. You need not stop to do it now, but I want you to do that, because I want to know if I can whether that represents what that road is probably worth or whether it represents what it has cost during the period of thirty years; or do you wish to be understood that in your opinion that if the road had been in existence from twenty to thirty years and its total cost during that period was $1,531,-238.40, that on liquidation that sum could be realized on that expenditure; is that what you mean?

A. Yes, sir, that is what I mean.

Q. You mean if that was the total cost without any allowance for depreciation, you think the road would be worth that at the end of thirty years?

A. I do, yes, sir.

Q. Is that in accordance with your experience as an expert in railroad matters?

A. It depends entirely upon the individual road. In this case I think it would.

Q. Do you think as a reasonable proposition that if the road cost over a period of thirty years without any allowance for depreciation $1,531,238, that it would sell in the market for its total cost after that period, without any knowledge as to what had been done in relation to renewals or by way of improvements; do you think that its cost could be produced on a sale?

A. I could not say that if I did not look at the amount of money which had been spent in renewals and how the road had been kept up.

Q. You have not look that up, because you have not been able to find it?

Mr. Holt: No, he said he had discovered those things, but they were not in the schedule.

The Master: Not renewals, simply increases in cost.

Mr. Holt: But not charged here in this exhibit.

The Master: I do not know about that; that is what I want to find out. What I am up against, for instance, here, and if it turns on this, I have to find it.

Q. You have given me a mathematical computation predicated upon the book value of certain assets, and there is no other hypothesis upon which that book value can be consistent with actual value. I do not want to be in the position of undertaking to find that the total amount expended in the construction of a road over a period of thirty years is the sum total that it would bring in cash if it was sold at the end of thirty years if no allowance was made for depreciation; I shall not be likely to put that finding in my report, because it does not seem to me to be reasonable. Do you get my point?

A. Yes, sir.

Q. If you can give me anything that will tend to show to me that as a result of that history of this road this item approximates the real cash value for which it could be sold, that is one thing; you get my point, don't you?

A. Yes, sir.

Q. I do not understand that you contend that if that is the total cost of construction without any allowance for depreciation, that the road after thirty years of wear would sell for just exactly what it originally cost; you do not take that ground, do you?

A. No, sir.

Q. I did not suppose so. That is right where I am. If this really represents the total cost without any allowance for de-

preciation, do you think that that sum can be realized in liquidation, or, in other words, that it ought to be charged up as a cash value to people that have to account for it on a certain date?

A. Not under the circumstances that you have mentioned, and I think your Honor will be served better by giving you that statement.

Q. Yes, exactly. Upon the state of facts that appears in this record up to date,—I have given you the exact situation—the parties have not given me anything to go and come on other than I have indicated to you in my questions, and so far as your testimony is concerned, it of course was predicated upon what is put in the record, and your testimony was that the book value was the equivalent of the actual cash value. Now, that involves this further consideration—I am only taking this as an illustration—here for instance it proceeds on the assumption that the bills receivable, $63,877.40, is all collectible, doesn't it?

A. Yes, sir.

Q. If they do not happen to collect any of them, that throws your calculation out that much, and if they collect only 50 per cent., that throws it out that much?

A. Yes, sir.

Q. Do you know whether they could collect any of it or have you any knowledge about it at all?

A. Not of that specific item.

Q. What is your experience in matters of bills receivable?

A. My experience is that they are either collected or charged off.

Q. Very true.

A. And that from year to year that balance would hold pretty steadily—

Q. We had in connection with one of these banks, we had doubtful debts of something like $40,000, and those you think were included in the trial balance? The bad debts, your judgment is, were charged off? Now then, there does not appear to be anything in connection with these railroad exhibits relative to either bad or doubtful debts. Of course I do not know

what presumption that raises, but your statement that the book value is the actual value is predicated on the assumption that the total amount could be collected, isn't that true?

A. Yes, sir.

Q. And you do not know whether it could be or not, and there is no way wherein it can be found out?

A. None.

Q. Except you have this fair presumption, your idea is it is a fair presumption, inasmuch as it is carried out as bills receivable, that they are all, generally spreaking, collectible, that would be your conclusion?

A. Yes, sir.

Q. Otherwise, your opinion is that they would be charged off to bad debts?

A. Yes, sir.

Q. That same thing is true as to sundries on open account, $84,863.20?

A. I should say, your Honor, that on open accounts those were all collectible, for the reason that there is—

Q. They are the accounts with people with whom they are doing business?

A. Yes, and they have to have an approved standing to do business. I am speaking generally of railroading and other transportation companies, and they are absolutely collectible.

Q. You have here in this trial balance $53,800 as the value of the Potomac Steamboat stock and Potomac Steamboat Company bonds. I do not believe that we have anything in this record indicating the character of that interesting company; but your statement proceeds on the assumption that those are worth par. If they do not happen to turn out to be worth anything, that throws your computation out?

A. Yes, sir.

Q. Have you got any information about that?

A. No, sir.

Q. Do you think it would be safe for me to assume that that is worth par simply because it is carried in the trial balance, when I am asked to charge, for instance, Virginia with its

value, without some investigation as to whether that was an asset of value, particularly in view of the fact that we have run across a great many corporations that seem to be more or less infirm. I do not know a thing about this, but do you think it would be a prudent thing for me to do?

A. No, sir, I think not.

Q. Now, then, taking into account the suggestion which you have made in connection with this trial balance, do you think it would be prudent for me to assume that the book value was the actual cash value that should be charged to Virginia?

A. No, sir, not the actual cash value.

Q. That is what you understand in the end is to be done, do you not? The contemplation is that Virginia must account for its assets at their fair cash value; isn't that your view of it?

Mr. Lilly: What does the decree of reference say in that regard?

The Master: I do not remember.

Mr. Lilly: I think the Master is a little strong on the terms.

The Master: I am not indicating what my conclusion is. I want to get Mr. Hillman's idea. The important thing with me is I want to be able when I make this report to make it on a basis that I can stand upon, and I do not want to get from the record here some fluke conclusion that perhaps Mr. Hillman himself would not stand behind. I want to get an idea of just exactly what weight I ought to give to the various factors involved in this. I doubt a great deal whether any one factor—of course, I cannot tell about that; it may be that there is no one factor which will determine it, and if not, what I want is something that I may get in the record that I can bottom myself on and feel safe on. How do you understand that? I do not know what the decree does read in that respect.

Mr. Lilly: My memory is it says to ascertain the value of the assets.

The Master: That is the value that is to be charged to Virginia.

Mr. Hogg: Our theory is that Virginia acquired this stock in her policy of internal improvement; that she did not buy it

necessarily for commercial purposes, but that if she now holds it as her own and it is of value to her, that it need not necessarily be a cash value; and furthermore, the lapse of time is so great under the circumstances of this case that it might be that all we can do is to get the best evidence of which the case is susceptible.

The Master: I do not go so far now as to say what rule I shall adopt, but I shall have to adopt some rule, and I would like to have the parties on either side address themselves to the hypothesis that I may possibly adopt the rule of actual cash value. I would like to have all these hypotheses discussed. Of course I appreciate the difficulty about lapse of time, Professor Hogg, but I feel bound to say that the lapse of time will probably not change the legal rule. I can understand how the parties are embarrassed, and the embarrassment may be on the other side also.

Mr. Holt: Our theory is further this, your Honor, we have no concealment from the other side or the Master, either.

The Master: I understand.

Mr. Holt: The books have considered all these questions. The cases are just as plentiful as blackberries in August, and when we show a balance sheet and the records, if the padding of assets or the shrinking of liabilities is to be resorted to for the purpose of showing us to be taking an incorrect position, impeaching our contention, that is squarely up to the other side. In other words, the books tell us that when we present the books and balance sheets, that we have made a prima facie case.

Mr. Lilly: We have assumed the burden.

Mr. Holt: And the burden shifts. Now, we find hundreds of cases along that line and they show that where you have no better evidence you will compare the assets with the liabilities and add to that perhaps as another factor the activities of the particular corporation.

The Master: A going concern.

Mr. Holt: A going concern; and really we feel, while we want to get in all the facts that we can, that in the light of the

authorities your Honor will discover that we have made a pretty strong case.

The Master: I think that may be all true. It is true that the burden is upon the other side, of course, to negative the contentions—I beg your pardon, Judge Holt, I think I may have cut you off.

Mr. Holt: I was only going to call attention to the fact that we have Supreme Court decisions, I mean of the United States, on the subject, as well as State cases, and we may fall down, but in the light of the authorities, I do not think so. There are really cases that go that far, that where it is an ancient situation the presumption must be rebutted that par shall not obtain. Some of the cases would relieve us from going any further than showing the par value of the stock, and then it is up to the other side to show whether or not it is above or below par; but we have not confined ourselves, of course, to that.

Mr. Anderson: Our friends will find cases that will sustain almost any proposition.

The Master: You are both entitled to the benefit that you can get from all those cases, and if you will call the attention of the Master to them you may be certain he will look them all over and read them all.

Mr. Holt: And when we find one in the Supreme Court of the United States, as my friend General Anderson suggests, we cannot consider that a mere vagary, and I know the Master will not.

The Master: When either side can show me a rule that in my judgment controls in this case, which is announced by the Supreme Court of the United States, it will come pretty near being final. But Judge Holt is perfectly right in his suggestion that this may be perfectly proper evidence because of the contentions made by counsel on the other side. Now, that is true, but at the same time of course I am sitting here as Master in this case, and it involves very large considerations of very great importance.

Mr. Holt: Do not understand us as criticizing the inquiry of the Master. I can see that if I was sitting there as Master

I would make the same inquiry. I am not taking that stand.

The Master: I just simply say, of course, that it is not only probable but possible that there are phases of this case that impress me in a manner in which they do not impress counsel on either side, and mine is the mind that must be satisfied in the end, and the only opportunity I have in connection with a matter like this, is to improve it as I go along. Any examination which I make is not to be considered a reflection upon counsel on either side, or a suggestion to counsel on either side. It is simply to clear up the situation that has been created in my mind by the case as it goes along. I think I have covered pretty much this subject. I won't take the time to go over it, but I have simply called your attention to this particular exhibit for the purpose of making an application of the general rules. I doubt very much whether we disagree about that.

Mr. Holt: Your Honor, it may be of course, I thought we would put in all our schedules, but under the examination by the Master of the witness it may be now that we will ask Mr. Hillman to put in an additional exhibit showing the present condition for whatever it may be worth of the Richmond, Fredericksburg & Potomac Railroad that would reflect something upon it.

The Master: It is pretty late now to fix one up; however, I shall let anything of that kind in that either of you think is material, and as to what weight I give to it will depend upon argument ultimately.

Mr. Lilly: You will use a pruning hook.

The Master: Of course we are all reasonably intelligent men, and it is easy enough to understand that a great many things happen in corporations during a period of time, and just exactly how much weight I might give would depend altogether upon whether there was a condition that made the situation today applicable to some prior time. But, however, anything that either of you might consider to be pertinent and relevant on those lines, I am going to leave the door extremely wide open.

Mr. Holt: Of course I could not say that that would have any value.

The Master: Well, I would not expect counsel to encumber

the record with evidence that they did not think had value, of course. But anything that any of you feel—of course we are not trying this case down to the question of hard pan on the question of remoteness—and there is another thing about this, you appreciate, and so do I, that neither of you have any remedy in case I exclude any testimony, except possibly to have this case sent back for another trial before the Master. Now I am going to lean away beyond what in my judgment would probably be the rule, under those circumstances. That is, you have no exceptions to anything that I rule out here, or rule in. If I rule out a piece of testimony and either party think it ought to go in, the only remedy there is, is to argue that proposition before the court, and if they think I have not admitted what ought to come in, it would have to come back to be heard again. I am going away beyond the rule so as not to give anybody any cause for complaint. If we had exceptions here, and we had the ordinary case, I would rule the best I could in accordance with the strict legal rules. But you appreciate my position. Neither of you have any adequate remedy in case I rule incorrectly. Under those circumstances, I am going to let the relevancy of this testimony rest largely upon the judgment and professional conduct of the men engaged in the case, and I am going to leave the door very wide open. I am going to have the record show that, so that there won't either of you have any opportunity to complain when you get before the Supreme Court.

The Witness: I do not recall, your Honor, whether there is a question or not.

The Master: I do not think there is.

The Witness: Do I understand that you want me to bring a statement of that item in?

The Master: I am not stating now what I am going to do, but I am undertaking to provide for every contingency.

Mr. Lilly: You would like to know whether depreciation has been taken care of?

The Master: Yes.

Mr. Lilly: We will look into that.

The Master: If that is the total sum that has been expended, without any allowance whatever during that whole period of

thirty years, nobody sitting around this table would expect me to hold that that road had that cash value at the end of that time. It would make me ridiculous if I did.

Mr. Holt: Do you understand what the Master wants on that line?

The Witness: Yes, sir, with reference to the construction account, whether or not depreciation can be determined to have entered into it, and whether or not there have been items expended in the road itself which had not been taken into the cost of it, on both sides.

The Master: What can you find in connection with the accounts of any of these banks that tends to show that the item of cost approximates really what its value is on January 1st, 1861, and is not a statement of the total expenditures, without any deduction therefrom. Of course, you will see right off where I would be on that proposition. You get my point, don't you?

Mr. Holt: Yes, sir.

Mr. Lilly: That is all, Mr. Hillman.

The Master: Subject to that, I suppose Mr. Hillman may be excused by both sides.

Mr. Holt: We have some other schedules.

The Master: He may be excused by the plaintiff, and then the defendant can let him go if they want to.

Mr. Lilly: We have two or three schedules in course of preparation.

Mr. Anderson: Mr. Harrison has some questions to ask on what has been developed lately.

Mr. Harrison: I want to call the attention of the witness, as well as the Master, to this exhibit he has furnished here this morning, relating to the taxes.

The Master: Has that been marked heretofore?

The Witness: No.

Mr. Anderson: It is a sub-sheet of Exhibit No. 10.

The Master: Then mark it as a sub-sheet of Exhibit No. 10.

Mr. Lilly: Mark it sub sheet of Defendant's Exhibit No. 10.

The paper was admitted in evidence and marked Defendant's

Exhibit No. 10, sub sheet, September 9th, 1914, C. B.

By Mr. Harrison:

Q. I would like to know first if this exhibit is to take the place of the other on this subject of taxes?

A. No, sir.

Q. The total you show is different, is it not?

A. Yes, sir

Q. Which one, then, do you rely upon as correct?

A. This one is correct for the collection of taxes accruing subsequent to June 20th, 1863, both assessed and collected after those dates.

Q. Is this the one, then, that the Master is to rely upon?

A. That is for the attorneys in this case to say, Mr. Harrison, and not for me.

Q. I thought you were going to furnish us with a corrected exhibit that would show the result of your investigation in the matter of these taxes that you claim should be charged against Virginia.

The Master: Let us see if we understand it the same. I understood that the witness was to furnish a detailed statement of the taxes that he said were assessed and collected, allocating it to the various counties, which was supplemental. I do not understand this is a correction of the other schedule, but that it is an amplification of the other schedule. As I understood it, Mr. Hillman was to amplify the other schedule, not necessarily to correct it, but to give us more details and show us just exactly the counties that these taxes came from.

Mr. Hogg: I understood it differently yesterday. Yesterday it did not appear from Exhibit 10 whether the tax had been levied prior to June 20th, 1863, and collected afterwards.

The Master: That is one question.

Mr. Hogg: And then it became a question whether we ought not to put in the record whether the taxes were levied after the formation of the State and collected afterwards, and therefore we have put in this one, so that if we are correct, that we have a right to all of the taxes, whether levied before or after 1863;

then we could rely on No. 10. That is what I understood the witness was to prepare.

The Master: The discussion covered two questions, one was whether taxes were assessed during the period between January 1st, 1861, and June 20th, 1863, and his original schedule did not show that; and the other was the counties and the amounts collected from the counties, of the taxes involved. Now he has given us in one detailed schedule both of those facts, as I understand it.

Mr. Hogg: Yes, sir.

The Master: So that this schedule is rather an amplification, rather than a correction of the other schedule.

The Witness: Yes, sir. And from this there is also omitted the taxes collected after 1861, which had been assessed prior to 1863.

The Master: Oh, well, then, it is a correction, too. It is both a correction and an amplification.

Mr. Lilly: I do not understand that it is a correction, your Honor.

The Master: Well, it is entirely immaterial as far as that is concerned. It simply eliminates one item. What is the other schedule?

Mr. Harrison: This schedule, if your Honor please, does not answer the purpose that you had in mind, and does not certainly answer the purpose that we had in mind.

The Master: You state that, and we will have it done.

Mr. Harrison: It was pertinent to inquire how much was the total of these taxes and the items constituting them that were assessed prior to June 20th, 1863. It does not show it.

Mr. Lilly: Mr. Harrison, would not that be the difference between the $224,000 in Exhibit 10, and $180,000 in sub sheet No. 10?

Mr. Harrison: No. I understand the totals are different. There is $180,000 shown on this one, and $224,000 on the other. The caption says, "Amount of taxes assessed by the State of Virginia and paid by West Virginia counties to State of Virginia from June 20th, 1863, to April, 1865." And then the sub-

heading is, "Law Processes. 1863, and subsequent." Now if that means that the several items appearing there accrued, were assessed in 1863, I would like to know when in 1863. Take the matter of the redemption of lands, 1863, and subsequent; they are small items, they only aggregate $123, but it is altogether indefinite. Now when you come to the general taxes and delinquent taxes and forfeited lands, being judgments on bonds of Commissioner of Delinquent and Foreited Lands, now we all know that you could not get a judgment on a bond over night; that is generally a slow process. If you have got to sue a sheriff in order to recover a judgment against him for the amount that he is liable for for delinquent taxes, it is not a matter that is done in a week or a few months; it is generally a long affair. There are $8,000 of those sort of items that are said to have accrued between January 1st, 1863, and June 20th, 1863. I say that is impossible.

The Master: Suppose you either develop right away on cross-examination the difficulties that you see, or else state to him specifically what you want in addition to what you have.

Mr. Harrison: If I undertook to cross-examine him, I have got this book before me, it would probably take us a half a day. I would take up each one of these items and make him find it here and show me; I think I could correct it, but it would take too long.

The Master: What is the reason that Mr. Hillman cannot take those books and make those comparisons and not take our time?

Mr. Harrison: I suppose he could.

The Master: Suppose you do this, suppose you state to Mr. Hillman what you want in addition.

Mr. Harrison: I would like to have the details upon which those figures in each instance are based, showing the dates of the assessments. That is what I would like to see.

The Master: And the payment.

Mr. Harrison: And the payment. When we get that, we have got something we can rely on.

The Master: It does not show that, Mr. Hillman. Do you want anything in addition to that?

Mr. Harrison: No. Then we will have it before us, and we can see the thing for ourselves.

The Master: It is true, of course, that this schedule does not do that. Your general statement covers it, and they desire that, and of course they are entitled to have it. Now suppose you have some of your assistants take this schedule and elaborate it and give the date of assessments and the date of collection, and the items that aggregate these items here, if there are any such, and before that is submitted have your accountant check it up with Mr. Potter, so that he can check up and save the time—I cannot take time to examine all those items here. The accountants must do this. You can do it while we are not in session; have some one of your men do it; it is not necessary for you to do it personally—you do not insist on Mr. Hillman doing this work personally, do you?

Mr. Harrison: Not at all.

The Master: Now you could get it up and work it out in detail, and before you present it submit it to Mr. Potter, and let Mr. Potter check it up, and then we can tell in five minutes whether you want to spend any time on it or not.

The Witness: Will you allow a moment?

The Master: Yes, certainly.

The Witness: The question between us is entirely as to the date of the assessment and the date on which the taxes were payable.

The Master: Yes.

The Witness: I do not know the date of the assessment.

The Master: Just take out of the books what you rely on as the basis for these statements. Get it up in that shape, and go over it with Mr. Potter. I am not going to delay this hearing to cross-examine on small items.

The Witness: Your Honor, this has been checked with Mr. Potter, and the entire question that comes up is the date of the assessment, whether the date of the assessment of taxes which are denominated 1863 were prior to June 20th. They were assessed at a certain date, possibly September, 1863.

The Master: As I understand it, there is not anything on these books of account that shows the dates of these assessments. What the original assessments would show, if you were able to get at them, is another thing. But the law provides that those assessments should have been made on a certain date.

Mr. Hogg: On the first of February.

The Master: Yes, on the 1st of February; the law provides that the assessments should have been made on the 1st of February, 1863, payable in 1864.

Mr. Hogg: Payable on the 1st of July.

The Master: Of course, these items here—this schedule does not show the taxes that could be allocated to the assessment of 1863, as distinguished from assessments after 1863, if there be any after 1863.

The Witness: There are some, and we have the details.

The Master: Get that detail up and check up that detail with Mr. Potter. I will not delay this hearing.

Mr. Harrison: I do not want to delay it.

Mr. Anderson: Mr. Hogg is mistaken.

The Master: I will not spend time discussing that, because there cannot be any controversy about it; that is in the law, and when you hand me the law, if you people disagree, I will decide what it is. It is not worth our while discussing that.

Mr. Hogg: I want to make this suggestion. You have in mind the month in which the assessment was made. For instance, if property was assessable on the 1st of February, 1863, and not payable until July or October following, we could not pay the tax claimed by Virginia because the county would have to account to its own State.

The Master: That is a question of law, and just exactly what the law says—in the first place, we labor under the same infirmity and misfortune in connection with this, and it is going to bother me more than it is you; if I could have here the usual, ordinary indications of value established beyond controversy, I would not have any trouble in deciding this case—but we have the same misfortune here that you have in connection with the other items; the records and books do not show speci-

fically what was done. Now, the next best evidence may be the law itself, and about that there cannot be any controversy; we will have it in here, and then what flows from it will depend upon how the facts are to be applied to it.

Mr. Hogg: No question about that.

The Master: We do not want to spend any time discussing pro and con what the law is, because that is going to be settled without any trouble later on. But we do want in this schedule every fact that bears upon that situation. And I want that stated as fully as you can state it, and I want it compared by Mr. Potter, and I am not going to allow time to be taken—and Mr. Harrison does not want it either—for cross-examination as to items making up these details. There is no need of it.

Mr. Harrison: No, not any at all.

The Master: There are some of these things that must be done. I am not going to delay the hearing for things that these accountants can do.

Mr. Holt: We felt that we had gone far enough when we showed that a tax, whenever it may have been assessed, was in reality collected after June 20th, 1863; that if you could establish that fact it raises then the only point of law that we make. It don't make any difference what the date of it was, just so you can fix the fact that it was collected by Virginia after June 20th, 1863; and according to our theory it makes no difference when it was assessed.

The Master: They have another theory.

Mr. Holt: Yes, they may have another theory.

The Master: I think we have spent enough time on it.

The Witness: I have already checked Mr. Potter's details, we have checked them jointly, and it will take but a short time.

The Master: Then do it at the noon recess, if it won't take but a short time.

The Witness: It can be done in half an hour.

The Master: I am simply taking this out of the hands of the attorneys and putting it in the hands of the accountants.

Mr. Anderson: It is a very unimportant item.

The Master: That is all the more reason why we should not

take time on it.

Mr. Harrison: I was just going to illustrate, so that the accountant might know just what we wanted.

The Master: That is right.

Mr. Harrison: Take for example these taxes carried forward here, and said to be judgment on bonds of commissioners for delinquent taxes. Take one item, page 194 of this journal, and we find that there is one item on a judgment against the Sheriff and his sureties for one-quarter share of the land and property and license taxes of the year 1861, $1,600. That was collected on the 23rd of June, 1863. Well, now, there are taxes that had accrued for the year 1861, you see, on which the Sheriff was subsequently sued, and final collection made June 23rd, 1863. Now, if there are items of that sort carried in there, we want that to appear, that is all.

The Master: You get the point, Mr. Hillman?

The Witness: Yes, sir. There are none of that kind in there.

The Master: Well, give all the details that there are, and have that exhibit complete and full. I do not want to have it necessary to have a single question asked in regard to that schedule. I want your work so complete and so accurate, checked up by Mr. Potter, that we can put it right in the record and call it final. Is there any further cross-examination?

Mr. Harrison: No.

The Master: Anything by way of re-direct examination?

Mr. Holt: I think not, your Honor.

The Master: We will suspend for five minutes then.

Mr. Holt: Before we suspend I would like to ask a question of my friends across the table. The other day I asked for a stipulation which they felt that they could not subscribe to. Perhaps I can narrow that to the point where they will agree, and if so it will exclude some lumber from the record, according to our theory. I do not believe I would take this argument down.

(Counsel discussed the subject for twenty-five minutes.)

Mr. Holt: For the purpose of showing that the reports of the banks upon which our exhibits have been based were made to the State of Virginia under compulsion of law, we read into the record sections 25, 26 and 27 of chapter 58 of the Code of Virginia of 1849 as follows—

The Master: You need not stop to read it.

Mr. Holt: I believe, as that is very short, I will read it.

The Master: All right.

Mr. Holt: (Reading): C. 25. The board shall annually in January, and quarterly thereafter, transmit to the governor a statement of the condition of the bank on the first day of the month, wherein shall be specified the amount of capital stock subscribed, with the amount paid and the amount unpaid thereon, the value of the real estate of the bank, the total amount of debts due to and from it, noting specially the amount of dealings in exchange, and the premium paid thereon, and also bad and doubtful debts; the amount on hand of gold and silver and other coin; amount of money deposited; amount of each denomination of bills in circulation, and the aggregate of the whole; amount of bills on hand of solvent banks incorporated by this state, and also of those incorporated elsewhere; and the rate and amount of the last dividend of profits, with the amount of the surplus or contingent fund; which statement shall be signed by at least a majority of the directors, and verified by the oath of the president or cashier.

26. In addition to the said quarterly statements, the several banks shall report to the governor a comparative statement of their condition for the corresponding quarter of the preceding year, and the governor shall have the same published in at least two newspapers in the City of *Richmond*.

27. There may at any time be an inspection of the books and examination into the proceedings of any bank, by a joint committee of the two houses of the general assembly, or a committee of either house, or one or more commissioners appointed by the assembly or the governor.

The Master: I have to suggest that there is about a page

and a half of the record that could be dispensed with by the statement that it is conceded that the reports of the various banks which have been introduced in this case were filed by authority of law and under the requirements of law. But, however, you need not do that unless you want to. That seems to be the fact. Now what is the reason you cannot put in the record a statement that it is admitted that at the time these reports were filed the law required reports of that character to be filed? Why does not that cover the ground?

Mr. Anderson: I have not any doubt about that being the law of the state.

The Master: Then what sense is there in having that statute go into the record?

Mr. Anderson: But the law did not state what the probative value of that was.

The Master: If you want this report to be full of all these things it will be full of them.

Mr. Anderson: I see no objection to it, but the law nowhere made it evidence.

The Master: Do you want printed two or three sections of this record?

Mr. Conrad: We accept it.

The Master: Then it may be stated that it is admitted that at the time the reports of the banks in question were filed they were filed in accordance with and subject to the requirements of the statutes of Virginia. Does that cover the whole question?

Mr. Holt: And that the law of the State upon the same subject in the year 1860 is identical with the Code of 1849.

The Master: And that such had been the law of Virginia since 1849. That covers it.

Mr. Holt: I am going on, on the theory that I am unable to get any stipulation.

Mr. Conrad: You need not.

The Master: It would save time if we had made that admission in the beginning.

Mr. Conrad: We made a suggestion two or three days ago

that if the Judge would specify in detail, we would take it up.

Mr. Holt: I am going to prepare that general admission and hand it to these gentlemen, and they will see how innocent it is.

The Master: Now, what is the next?

Mr. Holt: We now offer and read into the record for the purpose of showing that the laws of Virginia not only required railroads to make reports to the State, but even prescribed the form therefor.

Mr. Hogg: That included other companies in the same Act.

Mr. Holt: Railroads and other different improvement companies. Resolutions in relation to the form of annual reports of railroad and other companies, adopted March 15th, 1856, and found at page 286 of the Acts of Assembly of Virginia of 1855-6.

The Master: Just hand that original Act to the other side, and unless they desire to make a stipulation that will render its extension into the record unnecessary, it may go into the record.

Mr. Conrad: There is nothing more dangerous than to rely upon an Act. Have you looked in the Code of 1860, or subsequent legislation, to see whether that Act has been modified in any way within the period covered by our inquiry? We have a piece of literature known as Matthew's Digest, which is the Code of 1849 and 1850, with annotations showing the modifications by legislation and decisions up to the time—

Mr. Holt: We have done the best we could to find all that was possible on the subject.

The Master: Of course if this goes in and nothing else goes in I will take this to be the law from then on, and it is up to the other side to negative its continued existence. We will not stop to read that, because that is practically a duplication of what we have already had. Submit it to the other side and if they desire to make a stipulation, which will be agreeable to West Virginia, it will not be printed, and if they do not care to make the stipulation, it will be printed.

Mr. Lilly: We have furnished the stenographer a typewritten copy.

The Master: That is right, and if you reach that point, also furnish him the stipulation which will eliminate the Act.

Mr. Conrad: We just feel as if it had been submitted to us.

The Master: I have instructed them to submit it to you, and if after you examine it you desire to make a stipulation that will render unnecessary the extending of that in the record, and they agree to the stipulation, we will not have the Act printed; in other words, if you do not agree on the stipulation, that will go into the record. Now, let us have your next.

Mr. Conrad: We could keep all that mass of matter out of the record and save the cost of printing, if the Judge would just indicate in a little memorandum the different Acts.

The Master: He is going to do that.

Mr. Holt: The memorandum I was going to prepare related to that first effort at a stipulation. These Acts are all very brief, and there are not many of them, and unless they can be stipulated right along, they should go in at this place.

The Master: We are not going to take any more time with these, what may be called desultory Acts of the Legislature relating to various unrelated subjects. Judge Holt can go right along with them, and they will take exactly the same course that I have prescribed in relation to this one. Submit them to the other side, and if the other side are willing to make a stipulation which you agree to, that will eliminate them; if not, the Acts are to be printed.

Mr. Hogg: The same law was in force in 1860.

The Master: That is up to them, Mr. Hogg.

[No stipulation having been subsequently agreed upon, the Act of March 15, 1856, is here inserted.]

ACTS OF ASSEMBLY OF VIRGINIA—1855-56.

The following resolution will be found on pages 286-289:

No. 1.—Resolutions in relation to the form of annual reports of railroad and other companies.

Adopted March 15, 1856.

1. Resolved, That every railroad corporation in which the Commonwealth is interested as a stockholder or creditor, or whose road is wholly within the State, shall make an annual report to the board of public works of its condition and the state of its affairs on the thirtieth day of September, and of the operation of its road during the year ending on that day; which report shall be verified by the oaths of its treasurer or president and acting superintendent of operations, and be filed in the office of the said board by the fifteenth day of November in each year—and shall contain full information upon the several items hereinafter enumerated to-wit:

First. As regards its capital stock: The amount as by charter; the amount subscribed by the State, and amount subscribed by others; the amount paid in by the State, and amount paid in by others; the amount of further subscriptions on the part of the State authorized contingently. The information under this head to be so given as to show the several amounts as per last report, and the additions thereto or deductions therefrom, as the case may be, within the year.

Second. As regards its funded debt: The total amount; the time or times it will fall due; the rate or rates of interest thereon; the portion thereof due to the State. The information under this head to be so given as to show the several amounts as per last report, and the additions thereto or deductions therefrom, as the case may be, within the year.

Third. As regards its floating debt: The total amount, stating when and for what general objects it was incurred; the amount for each of those objects; and the rate or rates of interest thereon. The information under this head to be so given as to show the several amounts as per last report, and the additions thereto or deductions therefrom, as the case may be, within the year.

Fourth. As regards interest, the loss, if any, from the sale or disposition of bonds or other obligations at less than par, and all other expenses incurred in raising money: The total amount, stating what portion was for each of the above objects. The information under this head to be so given as to show the several amounts as per last report, and the additions thereto within the year.

Fifth. As regards the cost of the road and its equipments, also of buildings of all kinds, land, land damages and fencing, viz: For gradation and masonry; for superstructure of wooden bridges, for superstructure of iron bridges for superstructure of the road, including iron; for water stations, including the cost of procuring water and conducting it to them; for passenger and freight stations, buildings and fixtures; for engine and car-houses; for machine shops, machinery and fixtures; for all

other buildings; for land, for land damages and fencing; for locomotives and fixtures and snow ploughs; for passenger and baggage cars; for freight cars; for cars used on the repairs of the road and on construction; for engineering and agencies; for all work and property not enumerated above; the total cost of the road and equipment, as above. The information under this head to be given as to show the several amounts as per last report, and the additions thereto within the year.

Sixth. As regards the characteristics of the road: The length of the road; the track laid, including sidings; the weight of the rail per yard; the total rise and fall; the maximum grade in each direction; the length of the same in each direction; the total curvature; the shortest radius of curvature, with length of line on which it occurs; such other information, in detail, in regard to grades and curves and the location of the road, as the board of public works may require; the number of water stations; the aggregate length of wooden truss bridges between abutments; the aggregate length of iron bridges between abutments; the aggregate length of all other bridges between abutments; the whole length of road unfenced on both sides; the number of public roads crossed at grade; the number of railroads crossed at grade; the length of road, if any, unfinished, and estimated amount required for its completion, also what sum beyond the means already provided is required for that purpose; the length of branches owned by the company, and such information in detail in regard to them as the board of public works may require.

Seventh. As regards the equipment of the road, its depots, shops and other equipment of buildings: The number of locomotives, stating their weight; the number of passenger cars of each class, rated as eight-wheel cars; the number of baggage cars, rated as eight-wheel cars; the number of merchandise cars, rated as eight-wheel cars; the number of gravel and other cars used on repairs on construction, rated as eight-wheel cars; the number of depots of each class; the number of engine-houses; the number of machine shops; the number and character of other buildings. The information under this head to be so given as to show the several numbers as per last report, and the additions thereto within the year.

Eighth. As regards the doings of the year in transportation, and total miles run; the miles run by passenger trains; the miles run by freight trains; the miles run by gravel trains and other trains, employed on construction or repairs of the road: The rate of fare charged each class of passengers per mile; the number of passengers of each class carried in cars; the aggregate number of miles traveled by each class of passengers, or number of passengers of each class carried one mile; the rate charged per ton (of two thousand pounds) for each class of freight carried in cars; the number of tons of each class of freight carried in cars; the number of miles carried or total movement of each class of freight in miles; the average rate of speed adopted by ordinary passenger trains, including stops; the average rate of speed adopted by passenger trains when in motion; the average rate of speed adopted by express trains, including stops; the average rate of speed adopted by express trains when in motion;

the average rate of speed adopted by freight trains, including stops; the average rate of speed adopted by freight trains when in motion; the estimated aggregate weight in tons (of two thousand pounds) of passenger trains, exclusive of passengers and baggage, carried one mile; the estimated aggregate weight in tons (of two thousand pounds) of freight trains, exclusive of freight, carried one mile; the estimated aggregate weight in tons (of two thousand pounds) of gravel and other trains employed upon construction and repairs and their loads carried one mile, stating separately the aggregate weight of the trains and of their loads; the average weight in tons of passenger trains, inclusive of passengers and baggage; the average weight in tons of passenger trains, exclusive of passengers and baggage; the average weight in tons of freight trains, exclusive of freight; the average gross, also average net weight ordinarily drawn by the different classes of locomotives when worked to their full capacity, stating the weights respectively of the locomotives and of their tenders, and the ruling grades over which they pass when thus worked; the total amount of freight in tons, viz: The product of the forest; the product of animals; vegetable food; other agricultural products; manufactures; merchandise; other articles.

Ninth. As regards the expenses for the year of maintaining the road, showing separately the portions chargeable to passenger transportation and to freight transportation; the cost of the repairs of roadbed and railway (excepting the cost of the renewal of track and the repairs of the superstructure of wooden and iron bridges), viz: The cost of labor and materials, also the cost and expenses attending and consequent upon the use of engines and trains employed upon the repairs and maintenance of the road, also the repairs of such engines and trains and all items of cost connected with keeping the road in order; the length in feet of iron used in the renewal of track, with weight and cost thereof, also the weight and cost of all other iron used in the renewal of track; the cost of labor employed upon the renewal of track; the cost of the repairs of the superstructure of wooden bridges; the repairs of buildings; the repairs of fences and gates; the taxes on real estate; the totals of the above expenses of maintaining the road. The whole of the information under this head to be so given as to show separately the cost of materials and the cost of labor.

Tenth. As regards the expenses for the year of repairing machinery: Repairs of engines and tenders; the repairs of passenger and baggage cars; the repairs of tools and machinery in shops; the incidental expenses, including fuel, oil, clerks and watchmen about shop. The whole of the information under this head to be so given as to show separately the cost of materials and the cost of labor.

Eleventh. As regards the expenses for the year of operating the road, showing separately the portions chargeable to passenger transportation and to freight transportation: Office expenses, stationery, etc.; agents and clerks; labor, loading and unloading freight; porters, watchmen and switch tenders; wood and water station attendance; conductors, baggage and brakemen,

enginemen and firemen; fuel (quantity, first cost and labor of preparing for use), showing separately the quantity, etc., of coal and the quantity, etc., of wood; oil and waste for engines and tenders; oil and waste for freight cars; oil and waste for passenger and baggage cars; loss and damage of goods and baggage; damages for injury to persons; damages to property, including damages by fire and cattle killed on road; general superintendence; contingencies; the totals of the above expenses of operating the road.

Twelfth. As regards the gross earnings, cash receipts and payments other than for constructions within the year: First, gross earnings from passengers; from freight; from carriage of the United States mail; from other sources. Second, cash receipts from passengers; from freight; from carriage of the United States mail; from other sources. Third, payments other than for construction—for transportation expenses, viz: Expenses of maintaining and operating the road and of repairs of machinery; for interest; for dividends (stating the rate per centum and when declared) to surplus fund; total amount of surplus fund.

Thirteenth. As regards accidents: The number of persons injured in life and limb, and the cause of the injury, and whether passengers or persons in the employ of the company, also whether caused from carelessness or negligence of any person in the employment of the company, and whether such person is retained in employ.

Fourteenth. Statements, etc., to accompany the report, viz.: A statement of the name, makers' name, dimensions and weight of each engine, together with the cost of repairs and number of miles run, and the condition of each for the year; a statement of the number of tons of freight transported, and of the number of passengers carried in each month of the year in each direction, showing separately the through freight and the through passengers in each direction, also of the aggregate amounts charged for the transportation of freight and carriage of passengers in each month of year in each direction, showing separately the amounts charged for through freight and through passengers in each direction, and the amounts charged for way freight and way passengers in each direction; a statement of the tonnage sent from, and of that received at each depot of the road in each month of the year, and also of the passengers leaving and of those arriving at each of said depots; a statement of the amount charged to construction during the year, with a distribution thereof among the several objects to which it was applied; a statement exhibiting in parallel columns: First, the gross earnings of the road during the year; second, the total expenses of maintaining and operating the road and of the repairs of machinery, and of all other expenses chargeable to the business of the year; and third, the net revenue of the year, so distributed as to show what portion of the said "gross earnings," "total expenses," etc., and "net revenue" should be credited to or charged against each class of tonnage transported, and each class of passengers carried in the year, or any other services that may have been performed by the

company in said year, to be followed by a brief statement of the profit or loss, as the case may be, per ton of each class of freight transported, and per passenger of each class of passengers carried in the year, and of the profit or loss, as the case may be, for any other services performed by the company in said year.

2. Resolved, That the board of public works be and are hereby authorized and directed to prescribe the form or forms to be used by the several companies referred to in the preceding resolution, in making the annual reports required of them by the said resolution; and in preparing the said form or forms, the said board are hereby authorized and directed to call for any additional information that in their opinion would be necessary or useful in showing the true condition of the said companies, and the cost of transportation on their respective roads.

3. Resolved, That the several canal and navigation companies in this State shall also, on or before the fifteenth of November in each year, make a report to the board of public works of their condition, and the State of their affairs on the thirtieth of September, and of their operations in the year ending on that day, in such form as the board of public works shall prescribe; and that in preparing such form or forms the board of public works are hereby authorized and directed to require that the reports from the said companies respectively shall contain as full and minute information in regard to their condition, affairs and operations as is required by the preceding resolutions in regard to the condition, affairs and operations of the railroad companies referred to in said resolutions.

4. Resolved, That it shall be the duty of the board of public works to cause to be arranged, in tabular form, the information contained in the reports called for by the preceding resolutions, omitting only such details in the statements accompanying the said reports as may not be of general interest, and prepared together with the said reports, in a single document; and have the same printed by the fifteenth day of December of the year in which the said reports are made.

5. Resolved, That any railroad, canal or navigation company referred to in the preceding resolutions, which shall neglect to make the report required by the said resolutions, and as prescribed therein, shall be liable to a penalty of five hundred dollars, and that it shall be the duty of the board of public works to sue for the said penalty in the name of the Commonwealth.

6. Resolved, That it shall be the duty of the board of public works to furnish each of the railroad and canal and navigation companies aforesaid, on or before the first day of September in each and every year, with at least two copies of the form or forms aforesaid.

Mr. Holt: For the purpose of showing the establishment of the sinking fund and the object thereof created by the State of Virginia, we now read into the record Sections 28, 29 and 30 of Article 4 of the Constitution of Virginia of 1851. These Sections will be found at page 47 of the Code of Virginia of 1860.

For the same purpose, we read into the record an Act of the General Assembly of Virginia, entitled An Act establishing a sinking fund and providing for the payment of the semi-annual interest on and redemption of the public debt, passed March 26th, 1853, and beginning at page 29 of the Acts of Assembly of Virginia of 1852-3.

The Master: The same course will be pursued in connection with that as has already been suggested in connection with legislation relating to railroad and navigation companies.

CODE OF VIRGINIA, 1860.

Article IV, Constitution of Virginia, Sections 28, 29, *and* 30, *page* 47.

28. The liability to the State of any incorporated company or institution to redeem the principal and pay the interest of any loan heretofore made, or which may hereafter be made by the State to such company or institution, shall not be released; and the General Assembly shall not pledge the faith of the State, or bind it in any form, for the debts or obligations of any company or corporation.

29. There shall be set apart annually, from the accruing revenues, a sum equal to seven per cent. of the State debt existing on the first day of January in the year one thousand eight hundred and fifty-two. The fund thus set apart shall be called the Sinking Fund, and shall be applied to the payment of the interest of the State debt, and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the Sinking Fund, after the payment of such interest, shall be invested in the bonds or certificates of debt of this Commonwealth, or of the United States, or of some of the States of this Union, and applied to the payment of the State debt as it shall become redeemable. Whenever, after the said first day of January, a debt shall be contracted by the Commonwealth, there shall be set apart in like manner, annually, for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction; which sum shall be part of the Sinking Fund, and shall be applied in the manner before directed. The General Assembly shall not otherwise appropriate any part of the Sinking Fund or its accruing interest, except in time of war, insurrection or invasion.

30. The General Assembly may, at any time, direct a sale of the stocks held by the Commonwealth in internal improvement and other companies; but the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the Sinking Fund, and be applied in like manner.

ACTS OF GENERAL ASSEMBLY OF VIRGINIA—1852.

Chapter 17.—AN ACT establishing a sinking fund and providing for the payment of the semi-annual interest on and redemption of the public debt.

Passed March 26, 1853.

1. Be it enacted by the general assembly, That there shall be and is hereby appropriated annually from the public treasury, commencing with the year one thousand eight hundred and fifty-three, out of the accruing revenues of the Commonwealth, the sum of eight hundred and thirty-eight thousand and twenty-eight dollars and sixty-eight cents, that sum being seven per centum on eleven million nine hundred and seventy-one thousand eight hundred and thirty-eight dollars and thirty cents, the ascertained debt of the Commonwealth on the first day of January, one thousand eight hundred and fifty-two. The sum so set apart shall be called the "Sinking Fund," and shall be applied to the payment of the interest on the State debt, and the principal of such part as may be redeemable; and if no part of said debt be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of the Commonwealth, or of the United States, or of some of the States of the Union, and applied to the payment of said debt as it shall become redeemable.

2. Whenever after the said first day of January, eighteen hundred and fifty-two, a debt shall be contracted by the Commonwealth, there shall be set apart, in like manner, annually for thirty-four years, a sum exceeding by one per cent the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner hereinbefore directed.

3. If at any time the legislature shall direct a sale of the stocks held by the Commonwealth in internal improvement and other companies, the proceeds of such sale, if made before the payment of the public debt, shall constitute a part of the sinking fund, and be applied in like manner. The sinking fund, and its accruing interest, shall not be otherwise appropriated than is herein directed, except in time of war, insurrection and invasion.

4. It shall be the duty of the auditor of public accounts, upon the receipt of statements of the amount of the public debt hereinafter required to be furnished him by the second auditor, to pay into the treasury of the Commonwealth, on or before the first day of January, eighteen hundred and fifty-three, and annually thereafter, out of the accruing revenues, such portion of the sum set apart for the sinking fund provided by this act, as shall be applied to the redemption of the State debt existing on the first day of January, eighteen hundred and fifty-two. He shall, in like manner, pay into the treasury, to the credit of said fund, on or before the first day

of January, eighteen hundred and fifty-three, and first day of July, eighteen hundred and fifty-three, and on the same days of each successive year, the amount of the semi-annual interest on said debt which shall be due and payable at each respective date.

5. It shall also be his duty, in like manner, to pay into the treasury, on or before the first day of January, eighteen hundred and fifty-three, and annually for thirty-three years thereafter, out of the accruing revenues of the State, to the credit of the sinking fund, one per centum of the aggregate amount of the debt contracted by the State between the first day of January, eighteen hundred and fifty-two, and said day; and also to pay, in like manner, one per centum annually for thirty-four years on the aggregate amount of the debt which shall be contracted in each or any subsequent year. He shall pay, in like manner, into the treasury, to the credit of the sinking fund, on or before the first day of January and first day of July, eighteen hundred and fifty-three, and on the same days in each successive year thereafter, the amount of the semi-annual interest which shall be due and payable on the aggregate amount of such additional debts at those days respectively: provided, however, that the amount of interest payable on that part of the debt created by the issue of coupon bonds, shall be set apart and paid into the treasury to the credit of said fund, thirty days in advance of the respective semi-annual periods on which it shall become due.

6. For the purpose of managing, preserving and applying the sinking fund created by this act, the auditor of public accounts, register and secretary of the Commonwealth, for the time being, are hereby constituted a corporate body under the style of "The Commissioners of the Sinking Fund."

7. It shall be their duty to apply the moneys appropriated out of the sinking fund to the payment of the interest and redemption of the principal of the State debt at the respective periods prescribed in the fourth and fifth sections of this act for the payment of the sinking fund into the treasury by the auditor of public accounts, and to invest any part of the appropriations for the latter purpose, which cannot be so applied to the purchase of public stock, agreeably to the provisions of the second and third sections of this act.

8. The said commissioners, at their discretion, may apply that part of the sinking fund set apart for the redemption of the principal of the debt, to the payment in the first place of such bonds and certificates as the State is bound to redeem at fixed periods, provided such bonds and certificates shall be redeemable by the State before the arrival of such fixed periods.

9. All the certificates of debt which shall be redeemable under this act, shall be canceled by the second auditor, and delivered by him to the treasurer of the Commonwealth at the time of payment therefor, who shall carefully preserve the same in his office.

10. At each period for the payment of the installment of interest and the redemption of any part of the principal of the debt, the said commissioners shall, by a special order entered on the minutes of their proceedings, authorize the second auditor to issue his warrants on the treasury, from time to time, to the persons entitled thereto, in the same manner as they have heretofore been paid in his office.

11. They shall cause to be published in the Enquirer and Whig of the city of Richmond, and in the Union and National Intelligencer of Washington city, a list of the bonds or certificates intended to be redeemed from time to time, at least three months previous to the time fixed upon by them for that purpose, showing the date, number and amount of each, and calling for the surrender thereof on or before a specified day, and stating that the interest thereon will cease on and after that day.

12. Any two of said commissioners may form a board for the transaction of business. They may appoint a secretary, and shall keep a correct journal of their proceedings, of which they shall make a report to each regular session of the legislature. They shall hold their meetings in the second auditor's office, in which their books and papers shall be deposited for safe keeping.

13. It shall be the duty of the second auditor to prepare the necessary statements, showing the amount of semi-annual interest payable on the public debt at each successive period, and the amount of the principal of the debt proposed to be redeemed at each or either of them, and to furnish the same to the commissioners of the sinking fund, by whom they shall, if approved, be certified to the auditor of public accounts for his government. He shall also prepare and deliver to the commissioners of the sinking fund, lists in detail of such bonds or certificates of State debt as they shall from time to time designate, for redemption, and furnish them with such other statements and information as they may at any time require of him. He shall keep the accounts of the sinking fund with the treasury in such manner as to show distinctly at all times the amount of the transactions on account of each appropriate head of receipts and expenditures, and shall report the same to each session of the legislature.

14. All moneys belonging to the sinking fund shall be paid into the treasury on the warrant of the second auditor, and shall be paid out in like manner when authorized by the commissioners of said fund.

15. The treasurer shall receive and pay the moneys belonging to the sinking fund as herein required. He shall keep a distinct account of the same, and report to each session of the legislature the aggregate receipts and disbursements on account thereof up to the first of October or first of January, as the case may be, preceding each session of the legislature, and the balance remaining unexpended at such time.

16. In order to collect in one office the accounts of the debt of the Commonwealth and the transaction of all business connected therewith, it

is hereby provided that the existing certificates of debt of the State, registered in the office of the auditor of public accounts, and amounting to four hundred and fifty thousand one hundred and seven dollars, being part and remainder of the debt created by authority of an act to provide for the further subscriptions on the part of the State to the Exchange Bank and Northwestern Bank of Virginia, passed March nineteenth eighteen hundred and thirty-nine, shall, on and after the twentieth of December next, be registered and transferred to the second auditor's office, and the semi-annual interest accruing thereon shall be paid at the treasury out of the sinking fund, on his warrants, on and after the first day of January, eighteen hundred and fifty-three, until the said certificates shall be redeemed. The new certificates issued on transfers of said stock shall be countersigned by him; and all other duties which are imposed on auditor of public accounts, as well as any rights conferred in relation to said certificates of debt, shall, on and after the above day, be transferred to and devolve upon the second auditor, in whose office all the books and papers connected with said stock, which shall be necessary for the proper performance of said duties, shall be delivered to said second auditor; provided, that the amount of the semi-annual installment of interest of the first of July, eighteen hundred and fifty-two, and the unclaimed interest on said debt, which shall remain due and unpaid on the first of January, eighteen hundred and fifty-three, shall be set apart and paid to the persons entitled thereto by the auditor of public accounts, in the manner, and out of the appropriations made by the laws now existing, and not out of the sinking fund herein provided.

17. The accruing interest on the six per cent. revolutionary debt of twenty-four thousand and thirty-nine dollars and seventeen cents, and the seven per cent. war debt of eighteen hundred and fourteen, of three hundred and nineteen thousand dollars, belonging to the Literary Fund, shall continue to be paid, when it becomes due, as heretofore, out of the public revenue, upon the warrant of the auditor of public accounts.

18. The semi-annual installment of interest, payable the first day of July, eighteen hundred and fifty-two, on the aggregate internal improvement debt, registered at that date in the second auditor's office, shall be provided for and paid, as heretofore directed by law, on the warrant of the second auditor, and should that be insufficient, the deficiency to be paid out of the public treasury; and any portion of the said installment or previous installments which shall remain unclaimed and unpaid on the first day of January, eighteen hundred and fifty-three, shall be paid in the same manner, from time to time, as it shall be applied for.

19. The semi-annual interest becoming due at the same time, on that part of the State debt of eighteen hundred and thirty-nine, registered in the office of the auditor of public accounts, shall, together with the unclaimed interest due thereon, be paid out of the public treasury on the warrant of said auditor; provided, that no part of the interest on the stock of either description above referred to shall be paid out of the sinking fund.

20. It shall be the duty of the board of public works to cause to be paid into the treasury, to the credit of the Commonwealth, on the first day of January and the first day of July, one thousand eight hundred and fifty-three, or within thirty days after such dates, and semi-annually thereafter, the net surplus revenue of the fund for internal improvement during each half year preceding those days respectively, after deducting the fixed and incidental charges and special appropriations made by law on the revenue of said fund; provided, however, that nothing in this act is intended to discharge the said board from the obligation to pay the future semi-annual installments of the interest on the certificates of the internal improvement debt owned and held by the Literary Fund, as they shall hereafter become payable on and after the said first day of January, eighteen hundred and fifty-three; but said interest shall be duly paid or set apart as a charge on said revenue before such surplus shall be ascertained and paid over as herein directed.

21. This act shall be in force from and after its passage.

Mr. Holt: and for the same purpose we read into the record an Act of the General Assembly of the State of Virginia, entitled An Act to consolidate, re-establish and regulate the sinking fund of the State of Virginia, approved March 31st, 1875, and found beginning at page 420 of the Acts of Assembly of Virginia, 1874-5, page 420.

The Master: You will pursue the same course in connection with that.

ACTS OF ASSEMBLY OF VIRGINIA—1874-5.

Chapter 331—AN ACT to Consolidate, Re-establish and Regulate the Sinking Fund of the State of Virginia.

Approved March 31, 1875.

1. Be it enacted by the General Assembly, that the bonds of the State of Virginia, heretofore purchased by the commissioners of the Sinking Fund, which was established under the act of Assembly passed March thirtieth, eighteen hundred and seventy-one, known as the funding act, all bonds which have been received by the State on account of debts due to her, or on account of the disposition of her interest in any of the railroad or other internal improvement companies, since the thirtieth day of March, eighteen hundred and seventy-one, the bonds received from the following sources being included: From the Richmond and Danville Railroad Company, eight hundred and twelve thousand four hundred and seventeen dollars and forty-four cents; from the Richmond and Petersburg Railroad Com-

pany, five hundred and thirty-one thousand two hundred and fifty-seven dollars and seventy cents; from the Orange and Alexandria Railroad Company, eight hundred and seventy-four thousand six hundred and fifty-seven dollars and thirty-one cents; from the Norfolk and Petersburg Railroad Company, one hundred and forty-four thousand twenty-four dollars and forty-nine cents; from the sale of the Desert tract of land, sixteen thousand dollars; from the Dismal Swamp Canal Company, twenty-four thousand eight hundred and thirty-nine dollars and ninety-eight cents; from the board of public works, on account of claims against Selden, Withers and Company, the Chesapeake and Ohio Canal Company, one hundred and forty thousand eight hundred and fifty-three dollars. Also the bonds of the State now in the hands of the auditor of public accounts, which were received by him in settlement of claims due to the State, amounting to forty-six thousand four hundred and thirteen dollars and five cents; and the principal and accumulated interest of the bonds held by the commissioners of the Sinking Fund, which was established by the Act of Assembly, passed March twenty-six, eighteen hundred and fifty-three, shall constitute the Sinking Fund of the State of Virginia, and the interest upon the bonds thereof shall be applied, from time to time, as the same shall accrue, to the purchase of other bonds of the State; which shall, when so purchased, continue to bear interest and constitute a part of the Sinking Fund.

2. Whatever sums may be realized from the claims of the State against Selden, Withers and Company, the Chesapeake and Ohio Canal Company, from the interest on the debt due to the State by the Richmond and Danville Railroad Company; and from the principal of the said debt when paid; from dividends and interest paid by any and all railroad or other internal improvement companies; upon stock or bonds owned by the State or debts due to the State; from the sale or disposition of such stocks, bonds, or debts; and all sums which may be realized from the claims of the State against the United States, and from the sales, or rents, or profits of any real estate now belonging to the Commonwealth, and from damages which may be recovered by the State against defaulting revenue officers, shall be paid into the treasury of the State to the credit of the Sinking Fund, hereby authorized and established.

3. The commissioners of the Sinking Fund are directed to calculate the interest on the bonds of the old Sinking Fund, established by the act of March twenty-six, eighteen hundred and fifty-three, up to the first day of January, eighteen hundred and seventy-five; and to fund the principal and interest thereof in registered bonds, in their name; and all bonds now belonging to the said fund, or assigned thereto by this act, and all bonds hereafter purchased with the funds thereof shall be so converted or transferred.

4. The commissioners of the Sinking Fund shall keep regular and sufficient set of books, wherein shall be recorded all of their proceedings, showing their receipts and disbursements, and shall report the condition of the fund, and their proceedings with reference thereto, at each regular session of the General Assembly. The books and papers of the commis-

sioners shall be kept in the office of the second auditor; the bonds shall be kept in the office of the treasurer.

5. Before the payment of interest on any portion of the public debt the auditor of public accounts shall pay into the treasury, to the credit of the Sinking Fund, the sum of one hundred and fifty-four thousand three hundred and twenty-four dollars, for arrearages of interest at four per centum per annum, due to that fund, as established by the act of March thirtieth, eighteen hundred and seventy-one. And upon the Sinking Fund, as established by this act, he shall pay into the treasury, on the first day of July, eighteen hundred and seventy-five, and the first day of January, eighteen hundred and seventy-six, and on the first day of July, and the first day of January, every year thereafter, a sum equal to two per centum upon the whole amount of bonds held by the said fund, and the residue of State revenue in excess of the amount appropriated for the payment of interest on the public debt and the necessary expenses of government, which sums, when authorized by the commissioners of the Sinking Fund, shall be drawn from the treasury, on the warrant of the second auditor, from time to time, as may be ordered by the said commissioners, and shall be by them invested in the purchase of bonds of the State of Virginia; which shall, when so purchased by them and registered in their names, become a part of Sinking Fund, and continue to bear interest, in like manner with the other bonds of the said fund. In making their purchases under this act, the said commissioners shall be guided by the state of the market, giving the preference to that class of bonds which can be bought at the lowest rates.

6. In all cases in which bonds shall be funded under this act, West Virginia certificates shall be issued for one-third of the amount, in the name of the said commissioners, and shall be held by them as an offset against any claim which the State of West Virginia may hereafter set up against this State upon final settlement of the respective liabilities of the two States for the public debt.

7. This act shall be in force from its passage.

Mr. Holt: I introduce an Act of the Legislature of Virginia of February 11th, 1832, prescribing general conditions on which future subscriptions to joint stock companies are to be made, found at page 71 of the Acts of the General Assembly of Virginia of 1832. Also in the same connection I introduce an Act of the Legislature of Virginia providing for the negotiation of loans for the purpose of internal improvement, passed April 9th, 1838, found in the Acts of the General Assembly of Virginia of 1838, at page 24.

ACTS OF ASSEMBLY, 1831-2.

(Page 71)

Chap. LXXXI.—AN ACT prescribing certain general conditions on which future subscriptions to the capital of joint stock companies shall be made on behalf of the Commonwealth.

(Passed February 11th, 1832.)

1. Be it enacted by the General Assembly, That all subscriptions which are now authorized by law, and have not been made by the Board of Public Works, or which may hereafter be so authorized, shall be subject to the following conditions previous to subscription, to-wit: In every case the Board of Public Works shall be furnished with a certificate, under the seal of the company, signed by their treasurer, and countersigned by their president, stating that at least one-fourth of the private subscriptions of not less than three-fifths of the capital stock, has been actually paid up into the hands of the said treasurer, and that the remainder of said subscription is either so paid, or is made by solvent persons fully able to pay; and these facts shall be shown to the satisfaction of the Board of Public Works. They shall also be furnished with a list of the stockholders, showing the number of shares standing in each name. If any private improvement shall have been commenced previously to the subscription there to being authorized or made, the Board of Public Works shall be furnished with a statement, showing the amount of money received up to the date of such statement, and on what account received, and of the amount expended in the work, together with the balance of money on hand, the contracts entered into for the construction of the improvement, the exact progress made therein, as near as may be, its dimensions, its mode of construction, and a correct map of its location.

2. The instalments on the future subscriptions of the Board of Public Works, shall be payable in the manner, and on the conditions hereinafter mentioned, when not otherwise specially provided by law; that is to say, one-fourth of such subscriptions shall be paid on the production of the draft of the treasurer, or other authorized agent of the company, for the same, in such form as the Board of Public Works may prescribe, and the remaining three-fourths on similar drafts, in six equal semi-annual instalments, or in instalments of the same proportions with future payments of private subscriptions, at the discretion of the Board of Public Works: Provided, that before payment of the instalments aforesaid, the said Board of Public Works shall be furnished in every case with a certificate in the form and manner required by the first section of this act, showing the amount actually paid up by the private stockholders, which amount must be at least equal in

proportion to the amount payable by the Board of Public Works. But should the fund for internal improvement be inadequate, in the opinion of the said board, to the payment of the full amount of the instalments aforesaid, after providing for the subscriptions previously made, then their subscription shall be payable in such proportions, and at such periods, as the said board may deem expedient.

3. Whenever it shall happen in any year that the funds of the board, applicable to the purpose, shall prove insufficient to discharge when due the full amount of the instalments of subscriptions actually made, then and in that case, it shall be the duty of the said board to expend the funds so applicable, as far as they will go, in the payment of the instalments of such subscriptions as shall stand first in point of order, according to the date of resolutions of the Board of Public Works making the said subscriptions: and the fund for internal improvement shall not be chargeable with any interest, in consequence of such suspension in the payment of the whole, or any part of said instalments.

4. Whenever the Board of Public Works, having made any subscription to the stock of any company, shall have good cause to believe that the private subscriptions are improperly withheld, or that the funds of the company are misapplied, or will probably be misapplied, it shall be the duty of the said board to withhold payment of their subscription until proper legal measures can be taken to secure the faithful payment of private subscriptions and the faithful application of the funds of the company.

5. The Board of Public Works shall have the right to appoint such a number of the directors in all companies hereafter incorporated, to whose stock the Board of Public Works may subscribe, as will be in proportion to the stock so subscribed; and the fund for internal improvement shall participate in all dividends declared by said companies, in the proportion which the amount actually paid on behalf of the State, bears to the amount of private subscriptions actually paid up at the time of declaring such dividends; and in all general meetings of the stockholders of such company, the proxy or proxies representing the interest of the fund for internal improvement, shall have the right to vote on all questions, and in the election of all officers except directors, in the manner, and under the limitations contained in the twentieth section of the act, entitled, "an act prescribing certain general regulations for the incorporation of turnpike companies," passed the seventh day of February, eighteen hundred and seventeen.

6. It shall be the duty of the president and directors of every such company, to the stock of which the Board of Public Works shall subscribe as aforesaid, annually, on or before the seventh day of December, to furnish to the secretary of the Board of Public Works a report of the income and expenditure of every such company, for the next preceding year, including payments made by the stockholders, as well as tolls, together with a statement of the progress and condition of their works, a list of the stockholders

at the time of making said report, with the number of shares standing in each name, and such other information respecting the affairs of said company, as the Board of Public Works may require. It shall also be the duty of the president and directors of such company, within sixty days after any dividend shall have been declared by them, to give information thereof to the second auditor, and to pay into the public treasury, to the credit of the fund for internal improvement, within the said period, any such dividend to which the Board of Public Works may be entitled: and in case of failure, either on the part of the president and directors of such company, in furnishing such report and information, or of the treasurer of such company in paying such dividends as aforesaid the president and directors or the treasurer, as the case may be, of each company so failing, shall individually forfeit and pay to the Board of Public Works a penalty not exceeding fifty dollars; which said dividends and penalty may be recovered by motion in the general court, on ten days' previous notice.

7. All acts and parts of acts coming within the purview of this act shall be, and the same are hereby, repealed.

8. This act shall be in force from and after passing thereof.

ACTS OF ASSEMBLY, 1838.

Chapter 12.—An ACT providing for the negotiation of loans for purposes of internal improvement.
(Passed April 9, 1838.)

1. Be it enacted by the General Assembly, that all loans hereafter authorized by law for the payment of subscriptions on behalf of the Commonwealth to the capital of joint stock companies incorporated for purposes of internal improvement, or for defraying the expense of any work of internal improvement in which the State is or may be interested, as well as all such loans heretofore authorized, shall be negotiated according to the provisions of this act, except so far as may be otherwise specially provided by the acts authorizing the loans.

2. The board of public works, in effecting such loans, shall borrow upon the credit of the Commonwealth, at the lowest rate of interest at which the necessary amount can be obtained, not exceeding in any case five per centum per annum. Upon the payment of the money so borrowed into the treasury, which shall be done upon the warrant of the second auditor, the treasurer shall issue a certificate or certificates of loan for the amount thereof, purporting that the Commonwealth of Virginia owes to the lender, his heirs, executors, administrators and assigns, the principal sum so borrowed, together with the interest at the rate agreed on, that the interest is payable semi-annually at the treasury of the Commonwealth, and that such certificate or certificates were issued under authority of the special act authorizing such loans. Each certificate shall be signed by the treasurer, and countersigned by the second auditor, and be registered in a book to be

kept for that purpose by the second auditor, and shall be transferable on the books of his office in person or by attorney. The semi-annual interest on such certificate shall be paid on his warrant, and upon the transfer of the whole or any part thereof, shall be delivered up and cancelled, and a new certificate or certificates equal to its whole amount, shall be issued and registered in manner aforesaid. All loans negotiated in conformity to this act shall be irredeemable for twenty years, but shall afterwards be redeemable at the pleasure of the General Assembly.

3. For the payment of the interest, and the final redemption of the principal of any sum to be borrowed in conformity to this act, the stock of any joint stock company subscribed for or purchased with the money so borrowed, together with the dividends and other net income which may accrue therefrom to the Commonwealth, or to the fund for internal improvement, shall be, and the same are hereby appropriated and pledged; and in like manner the net income and other profits which may so accrue from works in which the State is interested, other than those of joint stock companies, and on which the money borrowed is to be expended, shall be and the same are likewise hereby appropriated and pledged for the payment of the interest and redemption of the principal of the money so borrowed; and if the stock aforesaid, and the said dividends, net profits and other income shall be inadequate to the payment of the said semi-annual interest, and the final redemption of the principal of the respective loans, the General Assembly pledges itself to provide other and sufficient funds, and for that purpose to levy, if necessary, an adequate tax upon any or all subjects liable to taxation under the constitution. Until such other sufficient funds shall be provided, so much of the income of the fund for internal improvement, not otherwise specially appropriated, as may be necessary to supply the deficiency, is hereby pledged for such purpose; and if at any time the dividends and other income arising from the stock or work as aforesaid, together with the income of the fund for internal improvement, shall be insufficient to pay the interest due upon the loan when demanded, the auditor of public accounts shall, upon the application of the Board of Public Works, issue his warrant upon the treasury, directing the payment of such interest out of any moneys therein not otherwise appropriated. And in case of the inability of the treasury at any time to discharge such warrants, the Board of Public Works shall be and they are hereby authorized to borrow the necessary amount from the banks of this State, at a rate of interest not exceeding six per centum per annum, on the credit of the Commonwealth, to be repaid in such manner as the General Assembly may by law direct.

4. The surplus dividends and other income arising from any stock or works aforesaid, and remaining after the payment of the interest due upon the certificates issued for loans applied to such stock or work, shall from time to time be applied by the Board of Public Works to the purchase of such certificates, if to be procured in satisfactory terms; and if not, then of any other certificates of State debt or any public debt or other stock which can be so purchased, which shall be held as a fund for the payment of the interest and redemption of the principal of the loans obtained for the pay-

ment of such stock or such work, and the interest accruing therefrom shall also from time to time be invested and held in like manner; and the said certificates of debt so purchased, together with the stock pledged, shall be disposed of in such manner as the General Assembly may direct: Provided, That the certificates so purchased on account of any particular loan, or such part thereof as may be necessary, shall from time to time be sold by the Board of Public Works to reimburse the fund for internal improvement for all payments of interest made out of the income for that fund on account of such loan, by virtue of this act.

5. The Board of Public Works shall be and they are hereby fully authorized and empowered to procure any or all of the loans authorized by law, either in the United States or in Europe, as they may deem most advantageous to the public interest, and for that purpose to appoint, if they see fit, one or more agents, with the necessary powers and to allow him or them such compensation as they may deem reasonable. In the event of a loan or loans being effected in Europe, the said Board may provide for the payment of the interest on the same semi-annually, in London or elsewhere, and may stipulate for the payment by the lenders of the amount of such loans in England or elsewhere, conforming the certificates to be issued to the terms of the loans. They shall also be empowered generally to do and execute all such acts and writings as may be necessary to complete the said loans, and to cause the prompt payment of the amount thereof into the public treasury.

6. Be it further enacted, That the person or persons, body or bodies politic or corporate, in whose names any of the certificates of the public debt of this Commonwealth shall be issued, in conformity to the provisions of this act, shall be deemed as to the Commonwealth the owner of the said stock until a transfer shall be duly made on the books of the second auditor, or other proper officer, to some other person or body politic or corporate. And if the person or body politic or corporate, in whose name the said certificate shall stand, shall for valuable consideration, and bona fide, sell and deliver the said stock to any other person, body politic or corporate accompanied by a power of attorney duly executed and authenticated, such sale and delivery shall vest in the transferree all the title of the transferrer, either in law or equity, to the said certificate; and upon the application of the attorney, and delivery of the certificate of debt therein assigned to the second auditor, or other proper officer of the Commonwealth, it shall be his duty to transfer the same, and issue a new certificate or certificates therefor in the name of the transferree: Provided, however, that all payments made by the Commonwealth prior to such transfer, on account of the interest on such certificate, shall discharge the Commonwealth from all claim on account of the interest so paid.

7. If any person, in whose name the said stock shall stand on the books of the Commonwealth, shall die without having made a sale or transfer thereof, and his executor or administrator shall produce to the second auditor, or other proper officer, the original certificate or certificates of the

said stock, and duly authenticated evidence that he is, by the laws of the country in which such holder may have died, the lawful executor or administrator of such holder, the second auditor shall, on his application in person, or by power of attorney duly authenticated, transfer the said stock to the said executor or administrator, or to such person as he may direct.

8. Whenever any certificate of stock created in pursuance of the provisions of this act, or by authority of any previous act, for purposes of internal improvement, shall have been lost by the holder or holders thereof, it shall and may be lawful for the second auditor and treasurer to renew the same in the manner mentioned in this act: Provided, however, that such certificate shall not be renewed until the party applying for the same shall produce satisfactory proof of his having advertised the same for at least three months previously to his application; shall execute a bond with sufficient security, to the treasurer and his successors, conditioned to indemnify the Commonwealth against any loss in consequence of the renewal of such certificate, and shall moreover file an affidavit setting forth the time, place and circumstances of the loss aforesaid.

9. It shall be lawful for any bank incorporated in this Commonwealth, through its proper officers, and by the authority, and under the direction of the said board, to act as the agent of the Board of Public Works in negotiating, obtaining or contracting for any loan which may be so authorized, and to do all necessary acts for the transfer of the proceeds of such loan into the public treasury, in specie or other satisfactory funds, by bills of exchange or otherwise, and to make on behalf of the said board the necessary arrangements for the punctual and regular payment of the interest on such loan, according to the terms of the contract therefor.

10. And whereas, should large sums be borrowed, of which a considerable part would necessarily lie idle until required for the purposes for which the loans may be respectively designed, whereby a great loss of interest would be incurred, the Board of Public Works may deposit the same with the banks of this Commonwealth, at such rate of interest as may be agreed upon by the board and said banks. The said board may also lend such part thereof to joint stock companies, as the said companies may be entitled by law to receive from them at subsequent periods, on such conditions and security as the board may deem expedient.

11. This act shall be in force from its passage.

The Master: I will say, so far as counsel for Virginia are concerned, they do not have to button right down to this thing now. Any time before we suspend this hearing this record may be modified to suit the judgment or the agreement of both parties concerned. That means, of course, they do not have to take it up during the intermission and take their time and work on it.

Mr. Lilly: The greater expense is in the stenographic work rather than the printing.

The Master: If the stenographers get the Acts out and later on they are stipulated, they will of course have to be paid for it.

Mr. Holt: We now offer and read into the record for the purpose of showing an official admission on the part of the State of Virginia made on the 7th day of September, 1863, that the assets then on hand were sufficient to practically discharge the total indebtedness of the State of Virginia, the message of John Letcher, then Governor of said State, to the Senate and House of Delegates of Virginia.

The Master: Found in what volume?

Mr. Holt: Found in volume entitled Journal, House of Delegates, 1863-64, Virginia.

The Master: That I presume you would want printed in full, because if a construction like that is predicated upon it I would want the whole document.

Mr. Holt: I said we offered the message, but I should have said a part of the message which I will indicate. The portion of the message to be read into the record begins with the last paragraph found on page 16, and continues through page 17 to the signature of the Governor.

JOURNAL HOUSE OF DELEGATES—CONFEDERATE VIRGINIA, 1863-64.

On pages XVI-XVII, Doc. No. 1, of said volume will be found certain paragraphs from Governor Letcher's message of date of September 7, 1863, pertaining to the indebtedness of the State of Virginia.

* * * * * * *

"I suggest whether it would not be wise to dispose of the interest which the State holds in our various internal improvement companies, under such restrictions as may be deemed proper, and apply the proceeds arising therefrom to the payment of the State debt. We could at this time dispose of these stocks to great advantage; and such an application of the proceeds would reduce the debt to a comparatively small sum. It is the part of wisdom to extinguish our debt as rapidly as possible, and any measure which will produce this result, will greatly increase public confidence.

The total permanent debt of the State is reported to be....		$34,399,680 30
This sum includes interest on the public debt uncalled for, the greater portion of which is due to the United States and her citizens...	$2,730,891 61	
It includes also the sum borrowed by us to aid in the prosecution of the war, and which by agreement is to be refunded by the Confederate government, amounting to.....	8,500,000 00	
		$11,230,891 61
These sums, making $11,230,891.61, when deducted, will leave as our State debt the sum of.....		23,168,788 69
Deduct debt purporting to be due the literary fund, which belongs to the State, and is a debt by mere fiction of law..		2,662,691 38
		$20,506,097 31
To pay which we have available bank stocks belonging to the literary fund, railroad and other stocks belonging to the internal improvement fund, worth in the market, and from which can be realized at any time the state may direct, the sum of.....		16,543,055 31
		$ 3,963,042 00
In addition, the Commonwealth owns $2,340,600 worth of bank stocks, which will readily command in the market the sum of		3,019,125 00
Leaving only to be provided for.....		$ 943,917 00

This statement has been prepared with great care, and after consultation with our auditors, and will, I believe, be found accurate and reliable.

I have thus brought to your attention such matters as are deserving of consideration at this session of the General Assembly. I have only to add, in conclusion, that I hope harmony and unity will attend your deliberations; that wisdom will dictate your measures, and that they will promote the honor, interests and prosperity of the Commonwealth and the Confederacy.

Respectfully,

JOHN LETCHER."

In conjunction with the message of Governor Letcher, we now introduce, and for the same purpose, the message to the Legislature of the State of Virginia of Governor Gilbert C. Walker, dated the 8th day of March, and found in Journal of the House of Delegates, 1869-70, Document No. 6.

The Master: That will be printed in full.

Mr. Lilly: So far as it refers to the debt.

The Master: Certainly, so much of it as relates to the debt.

SENATE JOURNAL AND DOCUMENTS, 1869-70.

(Pages 141 to 148.)

MESSAGE OF GOVERNOR GILBERT C. WALKER.

Resources.

The assets and securities owned by the State on the first day of January, 1870, are as follows:

Balance in treasury		$ 567,891 89
Alexandria, Loudoun and Hampshire Railroad Company bonds		50,862 40
Blue Ridge Railroad, owned by State (cost)		1,744,723 23
Chesapeake and Ohio Railroad Company:		
Six per cent. bonds	$ 58,500 00	
Interest on the same	17,550 00	
Common stock	2,013,987 50	
Seven per cent. loan	210,000 00	
Interest on the same	66,150 00	
Amount due from use of Blue Ridge Railroad, under act of March 5, 1849	117,947 24	
		2,484,134 74
Norfolk and Petersburg Railroad Company:		
Seven per cent. loan, secured by mortgage	$ 136,591 64	
Interest due on the same	4,780 18	
Six per cent. preferred stock	382,500 00	
Common stock	817,470 00	
		1,341,341 82
Orange and Alexandria Railroad Company:		
Seven per cent. loan, secured by mortgage	$ 249,962 27	
Interest due on the same	26,245 62	
Preferred stock	210,000 00	
Common stock	664,000 00	
		1,150,207 89
Richmond and Danville Railroad Company:		
Seven per cent. loan, secured by mortgage	$ 600,000 00	
Interest on the same	58,987 02	
Common stock	1,188,598 50	
		1,847,585 52

Richmond and Petersburg Railroad Company:		
Common stock		385,600 00
Richmond, Fredericksburg and Potomac Railroad Company:		
Common stock		275,200 00
Richmond and York River Railroad Company:		
Preferred stock	$ 200,000 00	
Common stock	290,999 52	
		490,999 52
Southside Railroad Company:		
Seven per cent. loan, secured by mortgage	$ 800,000 00	
Interest due on the same	280,000 00	
Common stock	803,500 00	
		1,883,500 00
Virginia and Kentucky Railroad Company:		
Common stock		103,438 69
Virginia and Tennessee Railroad Company:		
Loan	$1,000,000 00	
Interest on the same	455,000 00	
Preferred stock	582,500 00	
Common stock	1,717,500 00	
		3,755,000 00
Marietta and Cincinnati Railroad Company:		
First-class preferred stock	$ 166,600 00	
Second-class preferred stock	35,850 00	
First and second-class preferred scrip	161 91	
		202,611 91
James River and Kanawha Canal Company:		
Common stock		10,400,000 00
Other navigation companies		1,192,616 30
Interest in sundry plank roads, turnpikes and bridge companies		4,761,564 49
Claims against Chesapeake and Ohio Canal Company, about		900,000 00
Claims against Selden, Withers & Co		436,000 00
Unsettled claims against the State of West Virginia.		

Of these various stocks, bonds and claims, some are worth about par, some are much below par, but constantly improving in value, while others are worthless.

Considering them in the order above named, it is probably safe to say that the bonds of the Alexandria, Loudoun and Hampshire Railroad Company are good, and that the full amount, $50,862.40, will be paid. These bonds were given by the company in payment for stock held by the State, and sold to the company at $5 per share, and are secured by mortgage upon

its franchise and real and personal property. There are three bonds of $16,954.13 each, and due, respectively, on the 7th day of April, in the years 1872, 1874 and 1877; and the terms of sale of the stock by the State, as well as the prosperous condition of the company, justify the confident expectation that they will be promptly paid at maturity.

The Blue Ridge Railroad was built by the State at a cost of $1,744,723.23. By an act of the General Assembly, passed March 1, 1867, the Chesapeake and Ohio Railroad Company was authorized to purchase the interest of the State in this work, "by the surrender of State bonds to an amount equal to the value of said road at the time of purchase under the contract with the Virginia Central Railroad Company, said amount to be ascertained by the commissioners of the Covington and Ohio Railroad." The Chesapeake and Ohio Railroad Company have not yet completed the purchase of this interest, nor is it authoritatively known by the Board of Public Works that said commissioners have ascertained the amount which is to be paid by the same, although it is believed that the amount will be from one-third to one-half of the amount of said interest.

The Chesapeake and Ohio Railroad Company was formed by the consolidation of the Virginia Central and the Covington and Ohio Railroad Companies, under the law above mentioned, and succeeds to all the rights and liabilities of each of those companies. By the terms of said law, said company has "the right, at any time within two years after its organization to purchase the stock paid by the State in said company at the date of the purchase, by transferring to the Board of Public Works bonds of the State for an amount equal to the stock proposed to be purchased, and also to pay any debt which it may owe the State at the date of the payment, on account of loans made to any of the companies which may have consolidated, by surrendering to the Board of Public Works State bonds for an amount equal to the debt proposed to be paid." The consolidation above referred to was perfected August 15, 1868, and by the terms of the above quoted law, the right of said company to purchase the stock or pay the debts which the State holds in and against the same, will expire on the 15th day of August, 1870. The debt due the State by this company for loans and interest on the same, and for the use of the Blue Ridge Railroad, amounting to $460,147.24, is perfectly good, and will be paid. It is also hoped that this company will redeem the stock owned by the State therein, amounting to $2,013,987.50, as provided by the law above quoted. This company has been recently reorganized, and now numbers in its board of directors some of the ablest and wealthiest financiers, as well as some of the most experienced, energetic and competent railroad men in the country. The unfinished portion of the road is being put under contract, and the whole work, it is said, will be rapidly pushed to an early completion to the Ohio River. When completed it will indoubtedly prove to be one of the most profitable and valuable public improvements of the country, and of immense commercial and pecuniary advantage to our State. It must soon become one of the greatest arteries through which will be poured the vast and increasing commerce of the

Ohio and Mississippi valleys and the Northwest to our own cities and seaboard, as well as to cities and communities to the north of us. The interest of the State in this company, if not purchased by it, will, it is confidently believed, at no distant day rise to par in value; provided, always, that the undertakings and representations of those now controlling this improvement are fully and promptly executed.

The Norfolk and Petersburg Railroad Company's bonds, held by the State and secured by a first mortgage upon its property, are worth nearly par. No dividends have been paid upon either the preferred or common stock since the war, but if the road continues to prosper and increase in its business and capabilities as it has for the past four years, the stock will soon be as valuable as any railroad stock in the State.

The bonds of the Orange and Alexandria Railroad Company are also secured by first mortgage on the company's property, and rate much higher in the market than our State bonds. The Manassas Gap Railroad has been transferred to this company, under an act of the General Assembly, passed February 14, 1867, and the corporate name of the company changed to the Orange, Alexandria and Manassas Railroad Company; and in that transfer the State surrendered or donated to this company its interest in the original Manassas Gap Railroad. The road from Manassas Junction has been rebuilt and extended to Harrisonburg, so that it now commands the business of a very large, wealthy and growing section of the State. No dividends have been paid upon either the preferred or common stock since the war, nor is it safe to anticipate a resumption of payment of dividends for some years to come, although the business of the company is constantly improving and the stock daily increasing in value.

The Richmond and Danville Railroad Company's loans, amounting, with interest, to $658,987.02, are well secured, and may be reckoned among the solvent and best assets held by the State. This road has rapidly recuperated since the war, and with its large increasing business, ought to be able, in a few years, to resume the payment of dividends upon its common stock.

In the Richmond and Petersburg Railroad Company, the interest of the State consists only of common stock, not now dividend paying, but with the general increase of prosperity and business, it ought in a few years to be nearly or quite at par.

The stock of the Richmond, Fredericksburg and Potomac Railroad Company rates higher than any other railroad stock in the State, and will doubtless soon become dividend paying.

The Richmond and York River Railroad Company's preferred and common stock, held by the State, will not, for some time to come, prove a source of revenue to the State.

The State owns $300,000 of the 7 per cent. mortgage bonds of the Southside Railroad Company, and on the 1st of January, 1870, the accrued and unpaid interest thereon amounted to $280,000. These bonds were

originally secured by a first mortgage upon the property of the company, but the legislature, by an act passed January 18, 1866, authorized the company to issue and dispose of its bonds to an amount equal to an amount not exceeding the balance due upon a loan made to the company by the State under an act of the General Assembly passed February, 1853 (the same loan above mentioned), to be secured by a mortgage upon the property of the company, "the full force and effect of such mortgage to the State (first above mentioned) being hereby suspended, and the claims thereof are hereby postponed until the bonds issued under the mortgage herein authorized to be given in its place and stead, as aforesaid, shall have been paid." (See Acts of Assembly, 1865-6, pages 337-8.) The company mortgaged its property to secure about $700,000 of its bonds, issued by authority of this act, but notwithstanding the subrogation of this mortgage to the lien of the State, the claim of the State, amounting, with interest, January 1, 1870, to $1,080,000, is considered a solvent asset, and it is believed the company will soon be able to resume the payment of interest thereon. The common stock, under the impulse of prosperity, and the increasing business of the company, is constantly appreciating, and if the wise policy which now controls the management of this road shall continue, it will one day, not many years in the future, become a dividend paying stock.

The stock held by the State of the Virginia and Kentucky Railroad Company, amounting to $103,438.69, is at present valueless. Work upon this road will probably be soon resumed, and when completed this stock may become valuable.

The Virginia and Tennessee Railroad is one of the most valuable and important public improvements in the State. The volume of business has annually increased since the war, and if its success in the future shall continue to increase in the same ratio as it has during the past four years, within the next five years it will be able to pay a dividend upon its common stock. Its preferred, and even common stock, will, in four or five years, rate at or near par. A loan made by the State to this company of $1,000,000 is claimed by the company to have been paid during the war, but this claim is disputed by the State, and can only be settled by the courts. As soon as our courts are organized a statement of the facts can probably be agreed upon by the State and the company, and the case be submitted to and decided by the proper tribunal. If judgment shall be given in favor of the State it will be paid by the company. The claim and interest amounted, on the 1st of January, 1870, to $1,455,000.

The stock of the Marietta and Cincinnati Railroad Company was obtained by the State by Selden, Withers & Co. It is improving in value, but not worth par.

The interest on the James River and Kanawha Canal Company owned by the State, amounting to $10,400,000, is of no considerable marketable value. The State and private stockholders in this company could well afford, if authorized, to surrender gratuitously all its and their interests to any persons or corporation who would undertake, under suitable guaran-

tees, to complete that important improvement. The interest of the "other navigation companies" is of no particular value.

The interest of the State in the various plank-road and turnpike companies, amounting to $2,182,318.72, is comparatively worthless.

The claim of the State against the Chesapeake and Ohio Canal Company, being for interest paid on account of the bonds of that company guaranteed by the State, is in process of settlement; and the agents of the State who have the matter in charge are confident that the State will soon realize therefrom, less expenses, nearly or quite the sum of $600,000.

From the claim against Selden, Withers & Co., it is believed the State will realize about the sum of $150,000.

Relative to the claims against the State of West Virginia, for her proportion of the public debt, three commissioners have been appointed by this State, and provision has been made for the appointment of a like number by West Virginia, to adjust the same. It is hoped that an early settlement will be reached. Any discussion of the merits or amount of this claim would be out of place in this paper. It may not be improper to remark, however, that it would seem from the language of the act of March 21, 1867, that our General Assembly were of the opinion that West Virginia ought to assume and pay one-third of the public debt.

From this brief review of the assets and securities held by the State it will be observed that $2,612,776.37 are considered of equal or greater value than State bonds at present quotations, consisting of the following items—viz.:

Bonds Alexandria, Loudoun and Hampshire Railroad Company	$ 50,862 49
Bonds Chesapeake and Ohio Railroad Company, with interest, and including use of Blue Ridge Railroad	460,147 24
Bonds of Norfolk and Petersburg Railroad, with interest	141,371 82
Bonds Orange, Alexandria and Manassas Railroad Company, with interest	276,207 89
Bonds Richmond and Danville Railroad Company, with interest	658,987 02
Stock Richmond, Fredericksburg and Potomac Railroad Company	275,200 00
Amount to be realized from claim vs. Chesapeake and Ohio Canal Company, less expenses, and claim vs. Selden, Withers & Co.	750,000 00
	$2,612,776 37

(The balance in the treasury is not included among these items, for the reason that a portion of it will, necessarily be used to meet the current expenses of the government, and the disposition of the remainder is at the discretion of the General Assembly.) It will also be observed that of the assets, $10,048,267.91, it is hoped in a few years will be equal in value to State bonds, and will be available for the redemption of the State debt, as follows:

Stock Chesapeake and Ohio Railroad Company	$ 2,013,987 59
Stock Norfolk and Petersburg Railroad Company	1,199,970 00
Stock Orange, Alexandria and Manassas Railroad Company.	874,000 00
Stock Richmond and Danville Railroad Company	1,188,598 50
Stock Richmond and Petersburg Railroad Company	385,600 00
Stock Southside Railroad Company	803,500 00
Stock Virginia and Tennessee Railroad Company	2,300,000 00
Stock Marietta and Cincinnati Railroad Company	202,611 91
Bonds Southside Railroad Company, including interest	1,080,000 00
	$10,048,267 91

Deducting the amount of solvent assets which are immediately available for the redemption of the State debt, viz: $2,612,776.37, together with those which it is hoped and believed will become available for that purpose in a few years, viz: $10,048,267.91, from the gross amount of assets first above mentioned, leaves a balance of $21,302,233.62, which is not now, and probably never will become, of much value to the State. But, in addition to this large amount, the State has lost, abandoned or surrendered and released the following large sums, viz:

Subscription paid to Covington and Ohio Railroad Company.	$3,206,461 81
Subscription paid to Fredericksburg and Gordonsville Railroad Company	163,299 00
Subscription paid to City Point Railroad Company	110,000 00
Subscription paid to Blue Ridge Railroad Company, say	1,100,000 00
Subscription paid to Manassas Gap Railroad Company	2,280,000 00
Subscription paid to Portsmouth and Roanoke Railroad Company	406,650 00
Subscription to Roanoke Valley Railroad Company	207,402 00
Subscription to Winchester and Potomac Railroad Company.	270,000 00
Subscription to Alexandria, Loudoun and Hampshire Railroad Company	1,017,248 00
Subscription to navigation and other companies	298,032 05
Loss by Selden, Withers & Co., and Chesapeake and Ohio Canal Company	580,000 00
	$9,739,092 88

Which, added to the amount above stated as comparatively valueless, makes the enormous sum of $31,041,326.50, or nearly the amount of the old State debt.

Mr. Holt: In conjunction with the sinking fund, we introduce into the record Section 27 of the Constitution of Virginia, adopted in 1864, and found in the Acts of the General Assembly of Virginia, 1861-5, page 15.

ACTS OF ASSEMBLY, VIRGINIA, 1861 to 1865.

Sections 27, 28 *and* 29, *Constitution of the State of Virginia,* 1864.

27. The General Assembly shall provide by law for adjusting with the State of West Virginia the proportion of the public debt of Virginia, proper to be borne by the State of Virginia and West Virginia respectively; and may authorize, in conjunction with the State of West Virginia, the sale of all lands and property of every dereription, including all stocks and other interests owned and held by the State of Virginia in banks, works of internal improvement, and other companies at the time of the formation of the State of West Virginia, and no ordinance passed by the convention which assembled at Wheeling on the eleventh day of June, eighteen hundred and sixty-one adjusting the public debt between Virginia and West Virginia, shall be binding upon this State.

It shall not provide for the payment of any debt or obligation created in the name of the State of Virginia by the usurped and pretended State authorities at Richmond. And it shall not allow any county, city or corporation, to levy or collect any tax for the payment of any debt created for the purpose of aiding any rebellion against the State or the United States.

The Legislature shall not provide for the payment of any bonds now held by rebels in arms against the State or United States government.

28. The General Assembly may at any time direct the sale of the stocks held by the Commonwealth in internal improvements, and other companies located within the limits of this Commonwealth, but the proceeds of such sale, if made before the payment of the public debt, shall be appropriated to the payment thereof.

29. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability of the State or to suppress insurrection, repel invasion or defend the State in time of war. If the State becomes a stockholder in any association or corporation for purposes of internal improvements, such stock shall be paid for at the time of subscription, or a tax shall be levied for the ensuing year sufficient to pay the subscription in full.

Mr. Holt:

Now, upon the subject of interest, in the event that question should be involved before the Master, we read into the record the report of the case of Virginia against West Virginia, found in 11th Wallace, Supreme Court Reports, at page ——, showing when this suit was instituted and when it was terminated.

(A stipulation was subsequently entered into covering the report referred to.)

Mr. Holt:

Likewise as bearing contingently upon the subject of interest, and I might add for any other purpose found useful, we read into the record an Act of the General Assembly of Virginia, approved March 30th, 1871, providing for the funding and payment of the public debt, found in Acts of the General Assembly of Virginia, 1870-1871, Chapter 282.

The Master: The same understanding applies to that as to the railroad and navigation companies' legislation.

ACTS OF GENERAL ASSEMBLY OF VIRGINIA, 1870-71.

Chap. 282.—AN ACT to Provide for the Funding and Payment of the Public Debt.

Approved March 30, 1871.

Whereas, in the formation of the State of West Virginia, there were included within its boundaries about one-third of the territory and population of the State of Virginia; and whereas, in the ordinance authorizing the organization of said State, it was provided that the said State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, eighteen hundred and sixty-one, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this State, and will continue to be made as long as may be necessary; and, whereas, the people of this Commonwealth are anxious for the prompt liquidation of her portion of said debt, which is estimated to be two-thirds of the same; and, whereas, it has been suggested that the authorities of West Virginia may prefer to pay that State's portion of said debt to the holders thereof and not to this State, as the Constitution of this State provides; now, therefore, to enable the State of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be interposed to any other manner of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon her proportion of said debt as the same shall become due; therefore,

1. Be it enacted by the General Assembly of Virginia, That from and after the passage of this act, no bond, certificate, or other evidence of indebtedness, shall be issued for any portion of the debt of this State; nor shall any interest be paid upon any part or portion of said debt, except as hereinafter provided.

2. The owners of any of the bonds, stocks, or interest certificates heretofore issued by this State, which are recognized by its Constitution and laws as legal, except the five per centum dollar bonds, and what are known as sterling bonds, but including the stock of the old James River Company, and the bonds of the James River and Kanawha Company guaranteed by this State, may fund two-thirds of the amount of the same, together with two-thirds of the interest due or to become due thereon, to the first day of July, eighteen hundred and seventy-one, in six per centum coupons or registered bonds of this State of the denominations of one hundred, and the multiples thereof, dated that day, and to become due and payable in thirty-four years after that date, but redeemable at the pleasure of the State after ten years, the interest to be payable semi-annually on the first days of January and July in each year. The bonds shall be made payable to order of bearer, and the coupons to bearer, at the treasury of the State, and bonds payable to order may be exchangeable for bonds payable to bearer, and registered bonds may be exchanged for coupon bonds, or vice versa, at the option of the holder. The coupons shall be payable semi-annually, and be receivable at and after maturity for all taxes, debts, dues and demends due the State, which shall be so expressed on their face; and the bonds shall bear on their face a declaration to the effect that the redemption thereof is secured by a sinking fund provided for by law under which they are issued. The holders of the five per centum dollar bonds may in like manner fund the same in like bonds, bearing, however, five instead of six per centum interest. In the funding herein authorized, for any fractional sums less than one hundred dollars, certificates shall be issued bearing the same date and rate of interest, and payable at the same time as the bonds issued under this section; which certificates, in sums of one hundred dollars, or any multiple thereof, shall be exchangeable for bonds of the character herein authorized to be issued for any fractional sums less than one hundred dollars, which may remain in making such exchange.

3. Upon the surrender of the old and the acceptance of the new bond for two-thirds of the amount due as provided in the last preceding section, there shall be issued to the owner or owners, for the other one-third of the amount due upon the old bond, stock, or certificate of indebtedness so surrendered, a certificate bearing the same date as the new bond, setting forth the amount of the bond which is not funded as provided in the last preceding section, and that payment of the said amount with interest thereon at the rate prescribed in the bond surrendered will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and that the State of Virginia hold said bonds, so far as unfunded, in trust for the holder or his assignees; and provided further, that until such final settlement with West Virginia there shall be paid upon what are known as sterling bonds, in the manner now prescribed by law, two-thirds of the

interest accruing on the principal of said bonds, after July first, eighteen hundred and seventy-one; and for the interest accrued to said date certificates dated on that day shall be issued, drawing the same rate of interest as the bonds, two-thirds of which shall be paid as provided to be paid on the bonds. The remaining one-third of unpaid interest, both on the bonds and certificates, shall be payable in money, and the principal of said certificates in new sterling bonds of the same character as the old, in accordance with such final settlement as shall be made with West Virginia.

4. The treasurer is hereby authorized and directed to forthwith cause to be prepared, engraved or litographed, registered bonds and bonds with coupons and certificates of the character mentioned in the second and third sections of this act; and when prepared, shall commence the issuance of same as herein provided. The bonds and certificates shall be signed by the treasurer, and countersigned by the second auditor; the coupons shall be signed by the treasurer, or a fac simile of his signature shall be stamped or engraved thereon. Each denomination of bonds herein authorized to be issued, both registered and coupon, shall constitute a series, and the bonds of each series shall be numbered from one upwards, as they are issued; and the coupons in addition to the number of the bond to which they are attached, shall be numbered from one to sixty-seven. Each class of certificates authorized to be issued by this act shall be numbered, respectively, from one upwards, and in addition thereto, each certificate shall contain the number and date of the bond or certificate on account of which it is issued. Each bond, certificate of stock, and interest certificate, to be funded as herein provided, shall first be delivered to the second auditor, who shall calculate and determine the amount for which a bond shall be issued, and the amount for which certificates shall be issued, under the second and third sections of this act; which calculations shall be endorsed, dated and signed by him on the back of such bond, certificate of stock, or interest certificate, and he shall cause a proper registry thereof, together with the date and number of the bond, certificate of stock, or interest certificate, to be made and kept in his office. After such endorsement and registration, the second auditor shall deliver the bond, certificate of stock, or interest certificate to the treasurer, who shall thereupon deliver to him a bond or bonds and certificates of the character named in the second and third sections of this act, duly signed and numbered, for the several amounts, respectively, according to said endorsement. The second auditor, after making a proper registry of said bond or bonds, and certificates to be kept in his office, shall deliver the same to the person entitled to them. The treasurer shall, by proper endorsement, written or stamped, upon each bond, certificate of stock, or interest certificate so surrendered and delivered to him, cancel the same, and endorse thereon the date of such cancellation, and shall preserve the same in his office until otherwise directed by law. The treasurer shall also have made and preserve in his office a proper registry of every bond and certificate delivered by him to the second auditor, and whenever a coupon bond shall be issued payable to the order

of any person or firm, he shall secure and preserve the signature of such person or firm as a part of such registry whenever practicable.

5. Whatever sum may be realized from the claims of this State against Selden, Withers and Company, and the Chesapeake and Ohio Canal Company, and from the sale or disposition of the stocks and bonds, and debts owned by the State in and against any and all railway and other improvement companies, and all sums which may be realized from the claims of this State against the United States, and from any sales of any real estate now belonging to the Commonwealth, shall be paid into the treasury of the State to the credit of the sinking fund hereby authorized and created. In the year eighteen hundred and eighty, and annually thereafter, until all the bonds issued under and by authority of this act shall have been paid, there shall be levied and collected, the same as other taxes, a tax of two cents on the one hundred dollars of the assessed valuation of all the property, personal, real and mixed, in the State, which shall be paid into the treasury of the State to the credit of the sinking fund. The treasurer, the auditor of public accounts, and second auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the credit of the sinking fund to the purchase and redemption of bonds issued by authority of this act.

6. All necessary expenses incurred in the execution of this act shall be paid out of any moneys in the treasury not otherwise appropriated, on the certificate of the correctness of the same, signed by the treasurer and second auditor, and approved by the Governor.

7. This act shall be in force from and after its passage.

Mr. Holt: Also an Act of the General Assembly of Virginia, approved March 28th, 1879, relating to the funding of the Virginia debt and providing a plan of settlement of the same, found in the Acts of the General Assembly of Virginia, 1878-9, Chapter 24, page 264.

The Master: That is subject to the same condition.

ACTS OF GENERAL ASSEMBLY OF VIRGINIA, 1878-79.

Chap. 24—AN ACT to provide a plan of settlement of the public debt.

Approved March 28, 1879.

Whereas, it is believed by the General Assembly that the rate of interest heretofore agreed to be paid by the State on the public debt is greater than can be borne without destroying the industrial interests of the State; and whereas, the counsel of foreign bondholders of London, England, and the funding association of the United States of America, Limited, have, in view of this belief, expressed their willingness to jointly endeavor to obtain the consent of the creditors to an abatement in the rate of interest; and whereas, it is highly expedient, in the best interest of the State, to secure an amicable settlement with the creditors by which the credit of the State may be restored and enhanced, and the aggregate amount of interest payable by the State reduced within the limits which will not be too onerous to the population; therefore,

1. Be it enacted by the General Assembly of Virginia, That to provide for funding the debt of the State, the Governor is hereby authorized to create bonds of the State, registered and coupon, dated the first day of January, 1879, the principal payable forty years thereafter, bearing interest at the rate of three per centum per annum for ten years, and at the rate of four per centum per annum for twenty years, and at the rate of five per centum per annum for ten years, payable in the cities of Richmond, New York or London, as hereinafter provided, on the first days of July and January of each year, until the principal is redeemed. The State shall have the option of redeeming any or all of said bonds by the payment of principal and accrued interest at any time after the expiration of ten years from the first day of January, eighteen hundred and seventy-nine, on public notice to the holders of its purpose to make such redemption. The coupons of said bonds shall be receivable at and after maturity for all taxes, debts, dues and demands due the State, and this shall be expressed on the face of the registered bonds and on the face of such certificate. All obligations created under this act shall be forever exempt from all taxation, direct or indirect, by the State, or by any county or corporation therein, and this shall be expressed on the face of the bonds. The said bonds shall be of the denominations of one hundred dollars, five hundred dollars and one thousand dollars, at the option of the creditors, respectively, and the bonds, as well as their coupons, shall be payable at Richmond and New York, or, if desired, may be made payable in sterling at London, at the fixed rate of exchange of one pound sterling for five dollars. The bonds hereby authorized shall be issued only in exchange for the outstanding debt of the State, as hereinafter provided.

2. For the purpose of designation, the outstanding indebtedness of the State is divided into two classes, as follows, to-wit:

Class I, which shall be taken to include all tax-receivable coupon bonds, and all registered bonds and fractional certificates which are convertible under the act approved March thirtieth, eighteen hundred and seventy-one into such tax-receivable coupon bonds.

Class II, which shall be taken to include all bonds funded under the act approved March thirtieth, eighteen hundred and seventy-one, as amended by the act approved March seventh, eighteen hundred and seventy-two; and also two-thirds of the face value with two-thirds of the unpaid accrued interest up to the first of July, eighteen hundred and seventy-one, on all unfunded bonds, including sterling bonds.

3. The outstanding indebtedness of the State shall be funded in the new bonds, to be issued under this act, as follows: Bonds shall be presented for exchange with all coupons attached maturing after the date of presentation, and shall be exchanged at the face value of said bonds, dollar for dollar, for the new bonds, with all coupons attached maturing after the date of such presentation; provided, that the proportion of Class II, refunded, shall never exceed in amount one-third (1-3) of the total amount refunded, until eighteen million dollars of Class I have been retired. The new bonds to be issued may be coupon or registered, at the option of the holders, and at the like option coupon bonds may at any time be converted into registered bonds.

4. All due and unpaid interest may be funded under the provisions of this act at the rate of fifty cents on the dollar, and shall be fundable at that rate under the third section of this act, and taken, under the provisions of said section, in lieu of bonds of Class II.

5. If on or before the first day of May, eighteen hundred and seventy-nine, the council of foreign bondholders and the funding association of the United States of America aforesaid, shall file with the Governor their assent to and acceptance of the terms of this act, the same shall be taken to be a contract between the State and the said corporations and the Governor shall forthwith provide for the preparation of the bonds provided for by this act. The said corporations may present for funding, and in the proportions hereinbefore provided, at least eight millions of dollars of the outstanding obligations of the State prior to the first day of January, eighteen hundred and eighty; and during each period of six months, from and after the thirty-first December, eighteen hundred and seventy-nine, they may present an additional amount of at least five million of dollars, until the whole debt is funded; but any excess over said amounts, which may be presented during any of said periods may be estimated in requirement for the succeeding six months. So long as the said corporations shall present for funding the obligations aforesaid, in the amounts and in the periods aforesaid, they shall have the exclusive privilege of funding the outstanding debt under the provisions of this act; provided, that the said corporations shall arrange to receive the outstanding bonds at the city of Richmond, when the holders thereof shall so desire. But if the said corporations shall fail to file with the Governor their assent and agreement as aforesaid by the first day of May, eighteen hundred and seventy-nine, or shall fail to

present for funding the outstanding bonds in the proportions and amounts and during the periods hereinbefore specified, then the Governor may, in his discretion, make a like contract with responsible parties for the funding of the debt of the State under this act.

6. The rules prescribed under the act approved March thirtieth, eighteen hundred and seventy-one, in respect to preparing, signing and issuing the new bonds and coupons, regulating the same, and in taking in, cancelling and registering the old bonds, shall be observed by the officers of the treasury in the execution of this act; provided, that all bonds and certificates which may be necessary to be printed shall be printed from a plate which shall be the property of the Commonwealth, and shall remain in the keeping or under the control of the Second Auditor. Whenever an obligation of the State shall be presented to the Second Auditor to be funded under this act, he shall note the fact and date on the proper register in his office, shall punch a hole through the name of the Second Auditor signed or countersigned thereto, and shall issue his warrants upon the Treasurer for the new obligations required. There shall be endorsed upon the said warrants a description of the old obligations, and the calculation of the principal and interest for which the new obligations are to be issued. The said old obligations and warrant shall be carried by the Second Auditor to the Treasurer, who shall note the fact and date of funding on the proper register in his office, and if he shall find the warrant correctly drawn, shall sign the proper obligations to be issued, register the same in his office, clip therefrom the past due coupons and punch the same, and deliver the said obligations to the Second Auditor, taking his receipt therefor upon his warrant. The Second Auditor shall countersign the obligations so delivered to him, register the same in his office, and deliver the same to the proper person, taking his receipt therefor. The Treasurer shall jacket and file in his office the warrant upon which the new obligations were issued, with the surrendered obligations attached to said warrant, and shall number and date the jacket so as to make it easy for reference. But in cancelling and registering the bonds as above directed, in every bond and coupon surrendered under this act holes shall be punched in one or more places, and in such a manner as to render a new funding of the same impossible, and every bond and coupon so cancelled shall be filed for reference.

7. The owners of all classes of bonds mentioned in this act, who shall exchange their securities for the bonds created under this act, and who shall not have yet received certificates representing the remaining one-third of their principal and interest, due and payable by the State of West Virginia, shall receive certificates of a like character to those issued under the act of March thirtieth, eighteen hundred and seventy-one, when they make such exchange; and the State of Virginia will negotiate or aid such creditors holding all such certificates issued under this act, or previous acts, in negotiating with the State of West Virginia for an amicable settlement of the claims of such creditors against the State of West Virginia. The acceptance of the said certificates for West Virginia's one-third, issued

under this act, shall be taken and held as a full and absolute release of the State of Virginia from all liability on account of the said certificates.

8. The General Assembly will, by necessary and appropriate legislation, provide for the prompt payment of the interest on the bonds issued under this act.

9. In the year eighteen hundred and eighty-five, and annually thereafter until all the bonds issued under and by authority of this act are paid, there shall be levied and collected the same as, and together with other taxes, a tax of two cents on the one hundred dollars of the assessed valuation of all the property, personal, real and mixed, in the State, which shall be paid into the treasury of the State to the credit of the sinking fund. The Treasurer, the Auditor of Public Accounts and Second Auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually or oftener, apply whatever sum or sums may be to the credit of the sinking fund to the purchase and redemption of bonds issued under this act. All the certificates of debt which shall be funded, redeemed or purchased under this act shall be cancelled by the Second Auditor and delivered by him to the Treasurer of the Commonwealth at the time of payment therefor, who shall carefully preserve the same in his office. All certificates of debt acquired under the operation of the sinking fund, created by the act of March thirtieth, eighteen hundred and seventy-one, shall also be cancelled and delivered.

10. Executors, administrators and others acting as fiduciaries, may invest in the bonds issued under this act, and the same shall be considered a lawful investment.

11. The Treasurer shall, upon the first days of July, eighteen hundred and seventy-nine, and January, eighteen hundred and eighty, and upon the same days in each year, pay or cause to be paid to the holders thereof the half-yearly interest then due upon each of the bonds of the Commonwealth issued under this act.

12. Whenever there shall not be a sufficient amount of money in the treasury of the State to meet the accruing interest on the said bonds promptly, the Auditor is hereby authorized and directed, by and with the advice of the Governor of Virginia, to raise by temporary loan, to be returned out of the accruing revenues of the State, a sum sufficient to enable him to meet promptly the said interest as it accrues. And in case the Auditor shall not be able to raise a sufficient sum for the said purpose by loans, he is hereby authorized and directed to issue non-interest-bearing certificates of indebtedness of this State, to be signed by himself and countersigned by the Treasurer, and properly registered in the office of the Auditor and Treasurer, for the sum of one dollar and multiples thereof, the same to be printed from plates, which shall be the property of the State, and to sell the same at not less than a minimum price to be fixed by the commissioners of the sinking fund, which shall not be less than seventy-

five cents upon the dollar. The said certificates shall be receivable for all taxes, debts, dues and demands due the State, and this shall be expressed on their face. The amount of such certificates which may be issue at any time shall be fixed by the commissioners of the sinking fund, and the proceeds of the sale thereof shall be devoted exclusively to the payment of interest as aforesaid. The Auditor shall report regularly to the General Assembly the amount and character of certificates issued under this act, and the net proceeds thereof. In case the Auditor shall not be able to borrow the sums needed as aforesaid without security, he shall be and is hereby authorized to hypothecate such amounts of the said certificates as may be fixed on by the commissioners of the sinking fund, at a value to be fixed as aforesaid, but in no case to be at a less value than seventy-five cents upon the dollar; and in case of a sale of said certificates, wheter they may have been so hypothecated or not, they shall be offered for sale in suitable and proportionate amounts in the different counties, towns and cities of this State, so far as practicable, under regulations to be fixed by the commissioners of the sinking fund. The said certificates shall be received by the Treasurer of the State, and be cancelled on receipt thereof, under the same regulations and prohibitions now existing in relation to coupons for interest on the public debt, except that no tax shall be deducted therefrom, and the fact of their cancellation shall be noted on the said registers.

13. The act approved March fourteenth, eighteen hundred and seventy-eight, and all acts inconsistent with the provisions of this act, are hereby repealed.

14. This act shall be in force from its passage.

Mr. Holt: Likewise an Act of the General Assembly of Virginia, approved February 14th, 1882, regarding Virginia's equitable share of the State debt, found in the Acts of the General Assembly of Virginia, 1881-2, pages 88-98, Chapter 84.

ACTS GENERAL ASSEMBLY OF VIRGINIA, 1881-2.

Chap. 84—AN ACT to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering same, and the regular and prompt payment of interest thereon.

Approved February 14, 1882.

Whereas, to the end which this act comprehends, a full statement of the debt is essential; and whereas, the following has been carefully made up from the records of the second auditor's office of the State, it is confidently submitted as presenting a true state of the accounts between the State and her creditors—the account is as follows:

A STATEMENT OF THE PUBLIC DEBT OF THE STATE OF VIRGINIA.

Principal outstanding at this date:	
1861, January 1st, sterling debt bearing 5 per cent. interest..	$ 1,973,000 00
Dollar debt bearing 6 per cent. interest.....	29,533,582 90
Debt guaranteed bearing 6 per cent. interest.....	294,130 00
Total principal	$31,800,712 90
Past due and uncalled for at this date.....	$ 101,023 63
Maturing at this date, January 1, 1861.....	944,156 38
Total interest	$ 1,045,183 91

1863, July 1st. The State of West Virginia was formally admitted into the Union June 20, 1863. The property and resources of Virginia, upon which the above debt has been founded, were, by this partition of the old State, reduced, one-third of her territory and one-fifth of her population going to form West Virginia. This and the consequences of war to her and her people made a loss of full $500,000,000 of property, and her taxable values were reduced from $723,000,000 to $336,000,000, and her annual revenues from over $4,000,000 to $2,500,000.

		Interest.	Principal.
Sterling debt bearing 5 per cent. interest	$ 1,973,000 00		
Dollar debt bearing 6 per cent. interest	29,827,712 90		
Bonds issued since January 1, 1861, in discharge of debts contracted and appropriated, made prior to that date	1,340,500 02		
Total principal July 1, 1863			$33,141,212 92
Interest July 1, 1863:			
Past due January 1, 1861, and uncalled for	$ 1,045,183 01		
Accrued between January 1, 1861, and July 1, 1863, inclusive	4,909,533 07		
Total interest to July 1, 1863, inclusive		$ 5,954,716 08	
July 1st.—Two thirds of the above debt, principal and interest to this date, is assumed as Virginia's equitable portion in consideration of the partition of her terrtory, population and resources, upon the well-established principle that debt in such cases follows territory. Upon that basis, Virginia's portion of the debt of the entire State is—Principal:			
Two-thirds of $1,973,000 sterling debt	$ 1,315,333 34		
Two-thirds of $31,168,212.92 dollar debt	20,778,808 62		
Total principal, two-thirds, to July, 1863, inclusive			22,094,141 96

Two-thirds of $5,954,716.08, amount in arrears at that date, inclusive	$ 3,969,810 72		
Less amount of interest paid by Virginia since January 1, 1861, exclusively out of revenues of the present State of Virginia, the territory and resources of West Virginia being inaccessible during that period, and contributing nothing thereto	3,662,434 55		
Balance of interest due and unpaid July 1, 1863, inclusive		307,376 17	
July 1, 1871.—Principal July 1, 1863, in sterling bonds, as above	$ 1,315,333 34		
Principal July 1, 1863, in dollar bonds, as above	$20,778,808 62		
Less amount of dollar bonds redeemed between July 1, 1863, and this date	3,710,449 67		
Total dollar bonds	17,068,358 90		
Total principal			18,383,692 29
Interest from July 1, 1863, to July 1, 1871, inclusive:			
On $1,315,333.34 sterling bonds at 5 per cent	$ 526,133 28		
On $20, 778,808.62 dollar bonds at 6 per cent	9,973,828 14		
	$10,499,961 42		
Less amount covering time of the redemption of the $3,710,449.67 dollar bonds redeemed	$ 445,257 53		

Less amount paid in money during that period—July 1, 1863, to July 1, 1871.....	3,594,289 11			
		4,039,546 69		
			6,460,414 73	
To which add balance on account of interest to July 1, 1863, as above		307,376 17		
Total interest to July 1, 1871.....			6,767,790 90	
Principal:				
1879, July 1st—Sterling bonds as above.....	$ 1,315,333 34			
Less bonds redeemed between July 1, 1871, and this date.....	42,175 77			
Total		273,157 57		
Dollar bonds, as above.....	$17,068,358 35			
Less bonds redeemed between July 1, 1871, and this date.....	1,498,482 35			
Total		15,569,876 60		
Total of both classes of bonds.....				16,843,034 17
Interest from July 1, 1871, to July 1, 1879, inclusive:				
Eight years—On $1,315,333.34 sterling bonds at 5% .....$	526,133 34			
On $17,068,538.95 dollar bonds at 6%.....	7,763,804 28			
Total to July 1st.....		8,289,937 62		

1882, July 1st—Interest on $1,273,157.57 sterling bonds at 5 per cent	$ 180,981 62		
Interest on $15,569,876.60 dollar bonds at 6 per cent	2 802,578 79		
		2,983,560 41	
		11,273,498 03	
Add interest accrued to July 1, 1871, as above		6,767,790 90	
Total		18,041,288 93	
Less amount paid between July 1, 1871, and October 1, 1881, in money	$ 2,415,973 56		
In coupons	8,707,615 50		
Less amount covering average time of the redemption of the $1,540,685.12 bonds redeemed	331,800 00		
Less tax receivable coupons outstanding October 1, 1881, and to be paid as part of the floating debt	895,722 00		
Less tax receivable coupons maturing in January and July, 1882	1,117,724 87		
Amount of interest (special), redeemed and cancelled	380,110 02		
Total deductions		13,848,945 95	
Balance of interest to July 1, 1882			4,192,342 98

Total debt to July 1, 1882:	
Principal, as above	16,843,034 17
Interest, as above	4,192,342 98
Total	$21,035,377 15

Including bonds held by the Literary Fund to the amount of $1,428,245.25, and interest on the same in arrears July 1, 1881, $516,322.19, and interest added from that date to July 1, 1882, $85,694.71, making $602,016.90 included in the above sumof $4,192,342.98.

Total debt	$21,035,377 15

And whereas, by this account it appears that Virginia owes her creditors, as of the first of July, eighteen hundred and eighty-two, including the bonds held by the Literary Fund and arrears of interest thereon twenty-one million thirty-five thousand three hundred and seventy-seven dollars and fifteen cents; and that she may cause to be issued her own bonds for the same, and provide for the certain payment of interest thereon, that is for her equitable share of the bonds known as consols, and here designated as Class A, and whereof there are outstanding fourteen million three hundred and sixty-nine thousand nine hundred and seventy-four dollars and eighty-one cents; and for her equitable share of the bonds known as ten-forties, and here designated as Class B, and whereof there are outstanding eight million five hundred and seventeen thousand six hundred dollars; and for her equitable share of the bonds known as peeler, and here designated as Class C, and whereof there are outstanding two million three hundred and ninety-four thousand three hundred and five dollars and twelve cents; and for her equitable share of the interest thereon, designated as Class D, and whereof there is now in arrears nine hundred and twenty-eight thousand eight hundred and eighty-seven dollars and forty-five cents, and counted to the first of July, eighteen hundred and eighty-two, makes the amount of such interest then to be in arrears one million seventy-two thousand five hundred and forty-five dollars and seventy-five cents; and for her equitable share of the bonds known as unfunded bonds—dollar and sterling here designated as Class E, and whereof there are now outstanding, computed at two-thirds, three million seven hundred and seventy-three thousand four hundred and ninety-three dollars and sixty-eight cents; and for her equitable share of the interest thereon now in arrears, two million six hundred and thirty-six thousand four hundred and forty-four dollars and thirty-four cents, and counted to the first of July, eighteen hundred and eighty-two, making as of that date (two hundred and twenty-six thousand four hundred and nine dollars and sixty-two cents more), the sum of two million eight hundred and sixty-two thousand eight hundred and fifty-three dollars and ninety-six cents, and here designated as Class F; and for her equitable share of the bonds held by the Commissioners of the Literary Fund, whereof there are one million four hundred and twenty-eight thousand two hundred and forty-five dollars and twenty-five cents; and whereas, the rate of interest which any people can safely undertake to pay must be determined by the measure of their productive resources; and whereas, these have long been burdened by a rate of taxation which is conceded to be as high as can be endured; and whereas, the means of prompt and certain payment should be apparent to the creditor, while the people have assurance for the support of government and the maintenance of their schools, as required by the Constitution; and whereas, the net revenues of the State, remaining and so derived, after providing for the proper and gradual liquidation of the balance of the moneys heretofore diverted from the public free school fund, after liquidating gradually the arrearages to the Literary Fund, and leaving some small margin for the immediate and subsequent exigencies, which are, and are likely to be demanded by the public welfare—notably

in respect of the humane institutions now inadequate to the proper accommodation of that unfortunate class of every population—do not warrant the assumption of a larger rate of interest than three per centum upon the full amount of Virginia's equitable share of the debt of the old and entire State, as the same is ascertained and now formally declared by the foregoing account; therefore,

1. Be it enacted by the General Assembly of Virginia, That the board of commissioners of the sinking fund of the State, be, and they are hereby, empowered and directed to create bonds, registered and coupon, and to such extent as may be necessary to comply with the provisions of this act.

2. The said bonds shall be dated July first, eighteen hundred and eighty-two, and be payable at the office of the treasurer of the State on the first day of July, nineteen hundred and thirty-two; provided, that the State may, at any time from time to time, after July first, nineteen hundred redeem any part of the same, principal and interest at par. In case of such redemption before maturity, the bonds to be paid shall be determined by lot by said board of commissioners, and notice of the bonds so selected to be paid shall be given in a newspaper published at Richmond, New York, London, England, when interest from and after ninety days from the date of such publication in London, shall cease upon the bonds so designated to be paid.

3. The form of the bond shall be as follows, to-wit:

The Commonwealth of Virginia acknowledges herself indebted to..... ..... (in the case of a coupon bond to the bearer, and in the case of a registered bond, inserting the name of the person or corporation), in the sum of.....dollars, which she promises to pay in lawful money of the United States at the office of the treasurer of the State, Richmond, Virginia, on the first day of July, nineteen hundred and thirty-two, with the option of payment at par, principal, and interest, before maturity, at any time after July first, nineteen hundred; and interest at the office of the treasurer of the State, in such lawful money, on the first days of January and July, at the rate of three per centum per annum, until paid (according to the tenor of the annexed coupons, in the case of coupon bonds).

In testimony whereof, witness the signature of the treasurer and the counter-signature of the second auditor, hereto affixed according to law.

.....Treasurer.

.....Second Auditor.

4. The form of coupon for coupon bonds shall be as follows, to-wit:

No.....(of bonds).

The Commonwealth of Virginia will pay to bearer..... dollars, in lawful money of the United States, at the office of the treasurer, Richmond, Virginia, on the first days of January and July, alternately—the first coupon to be payable January first, eighteen hundred and eighty-three.

.....Treasurer.

Each coupon to be impressed on the back with its number in the order of maturity, from one forward.

5. The said board of commissioners are authorized to issue such bonds, in denominations of five hundred and one thousand dollars, as may be necessary to carry out the provisions of this act, each denomination to be of different time; provided that registered bonds may be issued of any denominations, multiple of one hundred; all registered bonds to be of the same time; and they are authorized to issue such bonds, registered or coupon, in exchange for the outstanding evidences of debt hereinbefore enumerated, including the bonds held by the literary fund, as follows, that is to say:

(A) For her equitable share of Class A, at the rate of fifty-three per centum; that is to say, fifty-three dollars of the bonds authorized under this act (principal and accrued interest, at par, from the preceding date of maturity to the date of exchange) are to be given for every hundred dollars, face, principal and accrued interest from the preceding semi-annual period of maturity to the date of exchange of such evidences of debt, and for any interest which may be past due and unpaid upon the same, funded bonds issued under this act may be given, dollar for dollar.

(B) For her equitable share of Class B, at the rate of sixty per centum, reckoning and accounting for any interest, as provided in the case of Class A.

(C) For her equitable share of Class C, at the rate of sixty-nine per centum, as in the cases of Classes A and B, and accounting for the same as provided in Class D.

(D) For her equitable share of Class D, at the rate of eighty per centum.

(E) For her equitable share of Class E, at the rate of sixty-nine per centum, reckoning any current interest, at the date of exchange, as in the cases of Classes A, B and C, and accounting for the same as provided in Class F.

(F) For her equitable share of Class F, at the rate of sixty-three per centum.

(G) For her equitable share of the bonds of the literary fund, as in the case of Class C; her equitable share of the arrearages of interest—three hundred and seventy-nine thousand two hundred and seventy dollars—to be paid in money.

6. For all balances of such indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share aforesaid, the said board of sinking fund commissioners shall issue a certificate as follows:

No.....

The Commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for ..... dollars, held by ....., dated the ..... day of

....., and numbered ....., leaving a balance of ..... dollars, with interest from ....., to be accounted for by the State of West Virginia, without recourse upon this Commonwealth.

Done at the Capitol of the State of Virginia, this ..... day of ....., eighteen .....

.....Second Auditor.

.....Treasurer.

7. The said board of commissioners are empowered to issue for any fractional part of one hundred dollars of the indebtedness funded under this act, the following certificate:

FRACTIONAL CERTIFICATE.

Register No. ..... Transaction No. .....

This certificate entitles the holder thereof to the sum of ..... dollars, fundable at its face in the bonds of the Commonwealth of Virginia, authorized by an act approved ..... day of ..... eighteen hundred and eighty-two, when presented with certificates of like tenor or in conjunction with other evidences of debt fundable under said act in amounts of one hundred dollars, and multiples thereof.

Done at the Capitol of Virginia, this ..... day of ....., eighteen hundred and eight.....

.....Second Auditor.

.....Treasurer.

The certificates so issued shall be registered by the second auditor in a register kept for that specific purpose, giving the date and number of the transaction to which it relates, the amount of the same, and the name of the person or corporation to whom it was issued; and as such certificates are refunded, the same shall be cancelled and preserved as herein provided in respect to the evidences of debt refunded.

8. All the bonds and certificates of debt and evidences of past-due and unpaid interest taken in under the provisions of this act, shall be cancelled by the treasurer in the presence of the board of commissioners of the sinking fund as the same are acquired, and by the treasurer the same shall be carefully preserved until such time as the General Assembly may otherwise direct. A schedule of the bonds, certificates and other evidences of debt so cancelled, from time to time, shall be certified by said board and filed with the treasurer for preservation.

9. All the coupons and registered bonds and fractional certificates issued under this act, shall be separately registered by the second auditor in books kept for this specific purpose, and in each case giving the date, number and amount of the obligations issued, and the name of the person or corporation to whom issued, and the date, number and amount and description of the bond, bonds or indebtedness surrendered.

10. The plates from which the bonds and fractional certificates authorized by this act are printed, shall be the property of the said board of commissioners of the sinking fund.

11. In the year eighteen hundred and ninety, and annually thereafter until all the bonds issued under and by authority of this act are paid, there shall be set apart of the revenue collected from the property of the State each year two and one-quarter per centum upon the bonds at the time outstanding, which shall be paid into the treasury to the credit of the sinking fund; and the commissioners of the said sinking fund shall, annually or oftener, apply the same to the redemption or purchase (at a rate not above par) of the bonds issued under this act, and the bonds so redeemed shall be cancelled by the said board, and the same registered by the second auditor in a book to be kept for that purpose, giving the number, the date of issue, the character, the amount, and the owner at the time of purchase of the bonds so redeemed and cancelled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot, as provided in section two of this act.

12. Executors, administrators and others acting as fiduciaries may exchange any State bonds held by them as provided, for bonds issued under this act, when so authorized by the court having jurisdiction in the premises, and the same, when so made, shall be considered a lawful investment.

13. The treasurer of the Commonwealth is authorized and directed to pay the interest on the bonds issued under this act, as the same shall become due and payable, out of any money in the treasury not otherwise appropriated.

14. All necessary expenses incurred in the execution of this act shall be paid out of any money in the treasury not otherwise appropriated, on the warrants of the auditor of public accounts drawn upon the treasurer, on the order of the board of sinking fund commissioners.

15. That from and after the passage of this act, no bonds, certificates, or other evidences of indebtedness, shall be issued for any portion of the debt of this State, nor shall any interest be paid upon any part or portion of said debt, except as hereinbefore provided.

16. This act shall be in force from its passage.

Mr. Holt:

I also introduce an Act of the Legislature of Virginia, approved February 20th, 1892, providing for the settlement of the public debt of Virginia not funded under the Act of 1882, found in the Acts of the General Assembly of Virginia, 1891-2, page 533, and an Act of the General Assembly of Virginia, approved January 31st, 1894, relating to the settlement and the funding of the public debt of Virginia, 1893-4, Chapter 110.

ACTS OF ASSEMBLY, VIRGINIA, 1891-'92.

Chapter 325—An Act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of the interest thereon, approved February 14, 1882.

Approved February 20, 1892.

Whereas, by a joint resolution of the General Assembly of the State of Virginia, adopted on the third day of March, eighteen hundred and ninety, a commission was appointed on the part of Virginia to receive propositions for funding the debt of the State not funded under the act known as the "Riddleberger Bill," approved February fourteenth, eighteen hundred and eighty-two, from a properly constituted representative of her creditors; and

Whereas, said Virginia debt commission has submitted a report to the General Assembly, wherein it appears that under a certain agreement, dated May twelfth, eighteen hundred and ninety, lodged with the Central Trust Company of New York, Frederick P. Olcott, William L. Bull, Henry Budge, Charles D. Dickey, Jr., Hugh R. Garden, and John Gill, constituting a committee for certain of the creditors of Virginia, called the "Bondholders' Committee," have proposed to said commission to surrender to the State in bulk not less than twenty-three million of dollars of the public debt, unfunded under said act, approved February fourteenth, eighteen hundred and eighty-two, in exchange for an issue of new bonds, as hereinafter specified, the same to be apportioned between the several classes of creditors by a tribunal which the said creditors have themselves appointed; and that, in pursuance of said proposal, an agreement has been entered into unanimously between the said commission and the said Bondholders' Committee, subject to approval by the General Assembly, whereby in exchange for the said unsettled obligations of the State held by the public, which were issued prior to February fourteenth, eighteen hundred and eighty-two (exclusive of evidences of debt held by the public institutions of the Commonwealth pursuant to law and by the United States), together with the interest thereon to July first, eighteen hundred and ninety-one, inclusive, aggregating about twenty-eight million of dollars, there shall be issued nineteen million of dollars of new bonds, dated July first, eighteen hundred and ninety-one, and maturing one hundred years from said date, with interest thereon at the rate of two per centum per annum for ten years from said first day of July, eighteen hundred and ninety-one, and three per centum per annum for ninety years thereafter to the date of maturity, said interest to be payable semi-annually; of which aggregate debt of about twenty-eight million of dollars, the said Bondholders' Committee represent that they now hold and agree to surrender not less than twenty-three million of dollars; and

Whereas, said report and agreement contemplate the surrender of the obligations held by the Bondholders' Committee as an entirety, and do not contemplate an apportionment by the General Assembly between the various classes of creditors so represented by said bondholders committee, the same having been committed to a distributing tribunal, as hereinbefore recited; and

Whereas it is the desire and intention of the general assembly that a settlement of all the other outstanding obligations of the State (except those issued under the act of February fourteenth, eighteen hundred and eighty-two, the evidences of debt held by the public institutions of the State in pursuance of law and by the United States) as well as those controlled by the bondholders' committee, as aforesaid, shall be made under the provisions of this act; therefore,

1. Be in enacted by the general assembly of Virginia, That the commissioners of the sinking fund, a majority of whom may act, be, and they are hereby, empowered and directed to create "listable" engraved bonds, registered and coupon, to such an extent as may be necessary to issue nineteen million of dollars of bonds in lieu of the twenty-eight million of dollars of outstanding obligations, not funded under the act approved February fourteenth, eighteen hundred and eighty-two, hereinbefore recited.

2. The said bonds shall be dated July first, eighteen hundred and ninety-one, and be payable at the office of the treasurer of the State, or at such agency in the city of New York as may be designated by the State, on the first day of July, nineteen hundred and ninety-one, and shall bear interest from date, payable semi-annually on the first days of January and July in each year, at the rate of two per centum per annum for the first ten years and three per centum per annum for the remaining ninety years; the said interest may be payable in Richmond, New York and London, or at either place, as may be designated by the State; provided that the State may at any time, and from time to time, after July first, nineteen hundred and six, redeem at par any part of the principal with accrued interest. In case of such redemption before maturity, the bonds to be paid shall be determined by lot by said commissioners of the sinking fund, and notice of the bonds so selected to be paid shall be given by publication beginning at least ninety days prior to an interest-due date, in a newspaper published in Richmond, Virginia, one in New York city, and one in London, England; and the interest from and after the next succeeding interest-due date shall cease upon the bonds so designated to be paid: provided that no registered bonds shall be so redeemed while there are any coupon bonds outstanding.

3. The form of the bonds shall be substantially as follows, to-wit:

Issued under act of assembly, approved ..... day of ....., eighteen hundred and ninety-two.

The Commonwealth of Virginia acknowledges herself to be indebted to ..... (in case of a coupon bond to the bearer, and in case of a registered bond inserting the name of a person or corporation, or assigns), in the sum of ..... dollars, which she promises to pay in

lawful money of the United States, at the office of the treasurer of the State, or at such agency in the city of New York as may be designated by the State, on the first day of July, nineteen hundred and ninety-one, with the option of payment at par with accrued interest, before maturity at any time after July first, nineteen hundred and six, and interest, at the office of the treasurer of the State, or at the agencies of the State in New York city and London, England, or at either place as may from time to time be designated by the State, in such lawful money aforesaid, at the rate of two per centum per annum for ten years from the first day of July, eighteen hundred and ninety-one, and at the rate of three per centum per annum thereafter until paid, payable semi-annually on January first and July first in each year (according to the tenor of the annexed coupon bearing the engraved signature of the treasurer of the Commonwealth in case of coupon bonds). And this obligation is hereby made exempt from any taxation by the said Commonwealth of Virginia, or any county or municipal corporation thereof.

In testimony whereof, witness the signature of the treasurer and the countersignature of the second auditor of the Commonwealth of Virginia, hereto affixed according to law.

(Seal)

....., Treasurer,

....., Second Auditor.

4. The form of coupon for coupon bonds shall be substantially as follows, to-wit:

COUPON NO. .....

On the first day of ..... the Commonwealth of Virginia will pay to bearer ..... dollars in lawful money of the United States, at the office of the treasurer of the State, or at the agencies of the State in New York city and London, England, or at either place, as may be designated by the State; the same being six months' interest on bond number ....., ... dollars.

....., Treasurer.

Each coupon to be impressed on the back with its number, in order of maturity, from number one consecutively.

5. Said commissioners of the sinking fund are authorized to issue coupon bonds in denominations of five hundred and one thousand dollars each, as may be necessary to carry out the provisions of this act: provided that registered bonds may be issued of the denominations of one hundred dollars, five hundred dollars, one thousand dollars, five thousand dollars, ten thousand dollars; and they are authorized and directed to issue said bonds, registered or coupon, in exchange for the said outstanding obligations up to and including July first, eighteen hundred and ninety-one (exclusive of evidence of debt held by public institutions of the Commonwealth as aforesaid and by the United States) as follows:

A. Said bondholders' committee may at any time on or before the thirteenth day of June, eighteen hundred and ninety-two, present to said commissioners for verification bonds and other evidences of debt, and coupons or other evidences of interest thereon, obligations of the State of

Virginia, held by said committee, for exchange as aforesaid; and said commissioners shall determine whether the obligations so presented are genuine obligations of the State and whether the coupons or other evidences of interest represent interest accrued on such obligations (exclusive of evidences of debt held by public institutions of the Commonwealth as aforesaid and by the United States).

B. Such of the obligations so presented for verification as may be determined by said commissioners to conform to the requirements of paragraph "A" hereof, shall be sealed in convenient packages as the examination proceeds. Each of the packages shall be numbered, and upon each package shall be endorsed the amount and character of the obligations therein contained. Such endorsement on each package shall be signed by said commissioners or a majority thereof, and the package shall then be delivered to said committee or its agent. Said commissioners shall keep in a book to be provided for the purpose a record of the numbers of all such packages and of the amount and character of the obligations contained in each. Such obligations presented by said bondholders' committee as do not conform to the requirements of paragraph "A" hereof shall be returned to said committee; but said commissioners shall keep a record thereof in the book aforesaid.

C. After said bondholders' committee shall have presented to said commissioners for verification bonds and other evidences of debt and coupons, or other evidences of interest thereon accrued on or before July first, eighteen hundred and ninety-one, obligations of the State of Virginia, all conforming to the requirements of paragraph "A" hereof, as determined by said commissioners, and amounting in the aggregate to not less than twenty-three million of dollars, after deducting one-third of the principal and interest of such obligations as were issued prior to the thirtieth day of March, eighteen hundred and seventy-one, and also deducting one-third of the principal and interest of such obligations as were issued under the act approved the thirtieth day of March, eighteen hundred and seventy-one, as do include West Virginia's proportion, said bondholders' committee may at any time on or prior to the thirtieth day of June, eighteen hundred and ninety-two, present the same in bulk to said commissioners for surrender and exchange as herein provided. All coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount or the face value thereof in cash, shall be surrendered with such bonds, the said cash to be returned if proper coupons are subsequently tendered. And when the said bondholders' committee shall have presented for exchange the obligations aforesaid to an amount of twenty-three million of dollars or more, if the engraved bonds hereinbefore authorized are not ready for exchange, the said commissioners shall, upon application of said bondholders' committee, issue to said bondholders' committee a manuscript registered bond of the State of Virginia, substantially of the form of the bond hereinbefore specified for the aggregate amount to which the said committee may be entitled for the obligations so presented under this act, the said bond to be exchangeable for the engraved bonds aforesaid of character and

amount required by said committee, as prescribed in this act, and interest in the meantime on said manuscript bond shall be paid as herein provided for on the engraved bonds.

D. The said new bonds shall be issued to said bondholders' committee by the said commissioners in the following proportion, to-wit: Nineteen thousand dollars of the new bonds to be created under this act shall be issued for every twenty-eight thousand of old outstanding obligations (principal and interest to July first, eighteen hundred and ninety-one), as aforesaid, surrendered by said bondholders' committee to the said commissioners, after the deductions provided for in paragraph "C" of this section; and a proportionate amount of said new bonds shall be issued for smaller sums of said outstanding obligations so surrendered: provided that no certificates issued on account of the proportion of West Virginia of the obligations of the State shall be funded under this act. When said bondholders' committee shall have surrendered and exchanged such obligations as aforesaid to the amount of at least twenty-three million dollars, said committee may at any time thereafter up to and including the thirtieth day of June, eighteen hundred and ninety-two, present to said commissioners for verification, surrender, and exchange additional obligations, principal and interest, as aforesaid; all coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount, or the face value thereof in cash, to be presented with such bonds, the cash, if paid, to be returned if proper coupons are subsequently tendered. After said commissioners shall have determined that said obligations conform to the requirements of paragraph "A" hereof, said commissioners shall accept the obligations so presented for surrender and exchange by said committee, and shall deliver to said committee in exchange therefor new bonds issued under the provisions of this act in the same proportion as is set out in this paragraph of this section, after making the deductions provided for in paragraph "C" of this section.

E. If on making the exchange provided for in this act said committee shall be found entitled to a fractional amount or amounts less than one hundred dollars in addition to the new bonds delivered to it, said commissioners of the sinking fund shall issue to the committee a certificate or certificates for such amount or amounts. Such fractional certificates shall be exchangeable for the bonds authorized by this act to be issued in sums of one hundred dollars, or any multiple thereof, and certificates of like character shall be issued for any fractional amount which may remain in making the exchange.

6. For all balances of the indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share of the bonds authorized to be exchanged under this act, the said share having been heretofore determined by the Commonwealth of Virginia, the said commissioners shall issue certificates substantially in the following form, viz.:

No. ..... The Commonwealth of Virginia has this day dis-

charged her equitable share of the (registered or coupon, as the case may be), bond for ..... dollars, dated ..... day of ....., and No. ....., leaving a balance of ..... dollars, with interest from ....., to be accounted for to the holder of this certificate by the State of West Virginia, without recourse upon this Commonwealth.

Done at the capitol of the State of Virginia, this ..... day of ....., eighteen hundred and ninety-two.

....., Second Auditor,

....., Treasurer.

The certificates so issued under sections five and six of this act shall be recorded by the second auditor in a book kept for that purpose, giving the date and number of the transaction to which it refers, the amount of certificates, and the name of the person or corporation to whom issued and delivered; and as such certificates, authorized by paragraph "E," section five of this act, are exchanged, the same shall be cancelled and preserved as herein provided in respect to the evidences of debt refunded.

7. The commissioners of the sinking fund are hereby authorized and required to receive on deposit for verification, classification and exchange such of the said obligations of the State as may be presented to said commissioners; provided, that said commissioners shall not receive on deposit for the purposes aforesaid any outstanding obligations of the State which have been once deposited with the bondholders' committee, or may be hereafter deposited with them; the said verification and exchange for the new bonds of the obligations so deposited to be conducted in the same manner as hereinbefore provided with respect to the obligations deposited with the said bondholders' committee, and the said commissioners of the sinking fund shall issue to and distribute amongst said depositing creditors after they have fully complied with the terms of this act, in exchange for the obligations so deposited, bonds authorized by this act as follows, namely: to each of the several classes of said depositing creditors the same proportion, as nearly as may be found in their judgment practicable by the commissioners of the sinking fund, as the same class shall receive under the distribution which shall be made by the commission for the creditors represented by the bondholders' committee: provided that no obligations shall be received for such deposit after the thirtieth day of June, eighteen hundred and ninety-two, nor shall any coupon bonds be received which do not have attached thereto all the coupons maturing after July first, eighteen hundred and ninety-one; but for any such coupons as may be missing, coupons of like class and amount or the face value thereof in cash, may be received; the said cash, if paid, to be returned if proper coupons are subsequently tendered; and each depositor shall, when he receives his distributive share of the said new issue of bonds, pay to the commissioners of the sinking fund three and one-half per centum in cash of the par value of the bonds received by him, or a commission equal in amount to that which may at any time hereafter be fixed by the said committee of bondholders upon

any bonds deposited with them, not, however, in any case to exceed three and one-half per centum; and said sinking fund commissioners shall cover the fund thus received into the treasury of the Commonwealth.

8. All the coupons and registered bonds issued under this act shall be separately recorded by the second auditor in books provided for the specific purpose, in each case giving the date, number, amount of obligations issued, and the name of the person or corporation to whom issued, and the date, number, amount and description of the obligations surrendered.

9. All the bonds and certificates of debt, and evidences of past due and unpaid interest, taken in under the provisions of this act, shall be cancelled by the treasurer in the presence of the commissioners of the sinking fund, or a majority thereof, as the same are required, and by him carefully preserved, subject to disposition by the general assembly; a schedule of the bonds, certificates, and other evidences of debt so cancelled shall be certified by said commissioners and filed by the treasurer for preservation.

10. In the year nineteen hundred and ten, and annually thereafter, there shall be set apart of the revenue collected from the property of the State each year up to and including the year nineteen hundred and twenty-nine, one-half of one per cent. upon the bonds issued under this act, as well as upon the outstanding bonds issued under act approved February fourteenth, eighteen hundred and eighty-two; and in the year nineteen hundred and thirty, and annually thereafter until all the bonds issued under this act and the said act approved February fourteenth, eighteen hundred and eighty-two, are paid, there shall be set apart of the revenue collected from the property of the State each year one per cent. upon the outstanding bonds issued under the aforesaid acts, which shall be paid into the treasury to the credit of the sinking fund, and the commissioners of the sinking fund shall annually, or oftener, apply the same to the redemption or purchase (at a rate not above par and accrued interest) of the bonds issued under the aforesaid acts, and the bonds so redeemed shall be cancelled by the said commissioners and the same registered by the second auditor in a book to be kept for that purpose, giving the number and date of issue, the character, the amount, and the owner at the time of purchase, of the bonds so redeemed and cancelled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot, as provided in section two of this act. All bonds of the State issued under the provisions of the act aforesaid, approved February fourteenth, eighteen hundred and eighty-two, and now held by said commissioners of the sinking fund, shall, as soon as at least fifteen million dollars of new bonds shall have been issued and delivered pursuant to the provisions of this act, be cancelled by said commissioners and preserved in the office of the treasurer of the Commonwealth.

11. Executors, administrators and others acting as fiduciaries may participate in the settlement of the debt herein specified in the manner

hereinbefore provided, and such action shall be deemed a lawful investment of their trust fund. Executors, administrators and others acting as fiduciaries may invest in the bonds issued under this act, and the same shall be considered a lawful investment.

12. All coupons heretofore tendered for taxes and held by said tax-payers in pursuance of such tender, shall be received in payment of the taxes for which they were tendered, and upon their delivery to the proper collector or the amount thereof in money, the judgments obtained against the said tax-payers for such taxes shall be marked satisfied; provided the said tax-payers shall have paid in money and not in coupons the costs of said judgments. All coupons heretofore tendered for taxes and held by the officers of the Commonwealth for verification, in pursuance of the statute in such case made and provided, shall be received in payment of the taxes for which they were tendered, and the money collected for such taxes returned to the parties from whom it was received; provided the said tax-payers shall have paid in money, and not in coupons, all costs incurred in legal proceedings to verify said coupons.

13. The treasurer of the Commonwealth is authorized and directed to pay the interest on the bonds issued under this act as the same shall become due and payable out of any money in the treasury not otherwise appropriated.

14. The plates from which the bonds and fractional certificates authorized by this act are printed shall be the property of the Commonwealth.

All necessary expenses incurred in the execution of this act shall be paid out of any money in the treasury not otherwise appropriated on the warrants of the auditor of public accounts, drawn upon the treasury on the order of the commissioners of the sinking fund.

16. The act entitled "an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon," approved February fourteenth, eighteen hundred and eighty-two, and the amendments thereto, to-wit: an act entitled "an act to declare the true intent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts eighteen hundred and eighty-one and eighteen hundred and eighty-two, approved February fourteenth, eighteen hundred and eighty-two," approved August twenty-seventh, eighteen hundred and eighty-four; and the act entitled "an act to amend and re-enact an act approved August twenty-seventh, eighteen hundred and eighty-four, entitled an act to declare the true intent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts of eighteen hundred and eighty-one and eighteen hundred and eighty-two, approved February fourteenth, eighteen hundred and eighty-two," approved November twenty-ninth, eighteen hundred and eighty-four, are hereby repealed.

17. The commissioners of the sinking fund are authorized, if it shall seem to them for the best interest of the Commonwealth, to make one extension of the time for the funding of the said twenty-eight million of dollars of outstanding evidences of debt for a period not exceeding six months from the thirtieth day of June, eighteen hundred and ninety-two.

18. The commissioners of the sinking fund are authorized to exchange coupon bonds issued under this act into registered bonds in the denominations hereinbefore provided, and to arrange for the transfer of registered bonds. For every bond so issued in exchange a fee of fifty cents shall be charged by and paid to the second auditor, and shall, upon his order, be covered into the treasury to the credit of the sinking fund; and bonds so taken in exchange shall be cancelled in the manner hereinbefore prescribed.

19. This act shall be in force from its passage.

Chap. 110—AN ACT to amend and re-enact sections 7, 17 and 18 of an act approved February 20, 1892, entitled an act "to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon, approved February 14, 1882," and to provide for carrying the same into effect.

Approved January 31, 1894.

Whereas it has come to the knowledge of this General Assembly, through the officers charged with the exchange and funding of outstanding obligations of the State under the provisions of an act to provide for the settlement of the public debt of Virginia, and so forth, approved February twentieth, eighteen hundred and ninety-two, that holders of a portion of the unfunded debt, some of whom are residents of Virginia, and others residents of foreign countries, were barred from accepting the provisions of said act approved February twentieth, eighteen hundred and ninety-two, by reason of circumstances beyond their control, and who now desire to accept the terms provided in said act, and it is believed that equitably they should be permitted to do so; and whereas the terms of settlement of the debt of the State having been proposed by her creditors, it is deemed just to adhere to the provisions of the act approved February twentieth, eighteen hundred and ninety-two, except as hereinafter provided; and whereas, it is the earnest desire of the General Assembly to finally dispose of the debt question without inflicting any wrong upon the creditors of the State either at home or abroad, but declaring the adherence of the State to the terms

of the act of February twentieth, eighteen hundred and ninety-two, as modified by this act, which should be taken as a final settlement of the State with her creditors; therefore,

1. Be it enacted by the General Assembly of Virginia, That sections seven, seventeen and eighteen of an act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled "an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and for the prompt and regular payment of interest thereon," approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two, shall be amended and re-enacted to read as follows:

7. The commissioners of the sinking fund are hereby authorized and required to receive on deposit for verification, classification and exchange such of the said obligations of the State as may be presented to the said commissioners; the said verification and exchange for the new bonds of the obligations to be conducted in the same manner as hereinbefore provided, with respect to the obligations deposited with the said bondholders' committee; and the said commissioners of the sinking fund shall issue to and distribute amongst said depositing creditors after they have fully complied with the terms of this act in exchange for the obligations so deposited, bonds authorized by this act as follows, viz.: To each of the several classes of said depositing creditors the same proportion as the same class receives under the distribution made by the commissioner for the creditors represented by the bondholders' committee: provided, that no obligations shall be received for such deposit after the thirtieth day of June, eighteen hundred and ninety-four, nor shall any coupon bonds be received which do not have attached thereto all the coupons maturing after July first, eighteen hundred and ninety-one; but for any such coupons as may be missing, coupons of like class and amount, or the face value thereof in cash, may be received; the said cash, if paid, to be returned if proper coupons are subsequently tendered; and each depositor shall, when he receives his distributive share of the said new issue of bonds, pay to the commissioners of the sinking fund three and one-half per centum in cash of the par value of the bonds received by him, and said sinking fund commissioners shall cover the fund thus received into the treasury of the Commonwealth.

17. The commissioners of the sinking fund are authorized, if it shall seem to them for the best interest of the Commonwealth, to make one extension of the time for the funding of the outstanding evidences of debt due by the Commonwealth not heretofore funded under said act of February fourteenth, eighteen hundred and eighty-two, and February twentieth, eighteen hundred and ninety-two, for a period not exceeding six months from the thirtieth day of June, eighteen hundred and ninety-four.

18. The commissioners of the sinking fund are authorized to exchange coupon bonds of the State issued under the act of February twentieth, eighteen hundred and ninety-two, into registered bonds, and vice versa,

and to arrange for the transfer of registered bonds. For every bond so issued in exchange a fee of fifty cents shall be charged by and paid to the second auditor, and shall, upon his order, be covered into the treasury to the credit of the sinking fund, and bonds so taken in exchange shall be cancelled in the manner hereinbefore prescribed.

2. The bonds issued hereunder may be the same heretofore engraved under the provisions of said act of February twentieth, eighteen hundred and ninety-two, and in the same form as prescribed in said act, and the plates for the engraving of said bonds under said act of February twentieth, eighteen hundred and ninety-two, may be used by the commissioners of the sinking fund in the preparation of bonds to be issued hereunder, and all bonds thus issued shall be in all respects valid.

3. The commissioners of the sinking fund are hereby authorized to advertise for the reception of bonds for exchange under the provisions of this act in such financial centres as they may deem best.

4. This act shall be in force from its passage.

The Master: These last four are subject to the same conditions.

Mr. Holt: In the same connection, that is, upon the funding of the debt and for the same purpose, we introduce a joint resolution of the General Assembly of Virginia, adopted in 1866, relating to the settlement of the Virginia debt, and found in the Acts of the General Assembly of Virginia, 1865-66, page 453, and also an Act of the General Assembly of Virginia for the adjustment of the public debt with the State of West Virginia approved February 18th, 1870, and found in the Acts of the General Assembly of Virginia, 1869-70, Chapter 6.

ACTS OF ASSEMBLY, VIRGINIA, 1865-66, Page 453.

No. 7—Joint Resolution on the restoration of the State, and the adjustment of the public debt.

Adopted February 28, 1866.

1. Resolved by the General Assembly of Virginia, that the people of Virginia deeply lament the dismemberment of the "Old State" and are sincerely desirous to establish and perpetuate the reunion of the States of Virginia and West Virginia; and that they do confidently appeal to their brethren of West Virginia to concur with them in the adoption of suitable measures of co-operation in the restoration of the ancient Commonwealth of Virginia, with all her people, and up to her former boundaries.

2. That three Commissioners, resident citizens of this State, shall be appointed by the joint vote of the two houses of the General Assembly, to proceed forthwith to the seat of government of West Virginia, for the

purpose of communicating to the Governor and General Assembly of that State a copy of the foregoing resolution, and the report of the committee accompanying the same, with authority to treat on the subject of the restoration of the State of Virginia to its ancient jurisdiction and boundaries provided, that the result of such negotiation, if favorable to such restoration on any terms, shall be subject to the approval or disapproval of the legislatures or conventions of the respective States, as may be hereafter mutually agreed upon.

3. The commissioners appointed under the foregoing resolution, are also empowered and directed to treat with the authorities of West Virginia, upon the subjects of a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State, and of a fair division of the public property; subject, however, to the approval or disapproval of this General Assembly.

4. The said commissioners are hereby authorized to treat upon either or both of the subjects mentioned in the two preceding resolutions, as circumstances may demand, with instructions to suspend or forbear any action on the subject of adjusting the debt of the State, or a division of the public property, if in their opinion the probable restoration of the State of Virginia to its ancient boundaries may render an effort at such adjustment unnecessary. The action of said commissioners to be subject to the approval or disapproval of this General Assembly.

Chap 6.—AN ACT for the adjustment of the public debt with the State of West Virginia.

Approved February 18, 1870.

1. Be it enacted by the General Assembly, That three commissioners, resident citizens of this State, be appointed by the Governor to treat with the authorities of West Virginia upon the subject of the proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State, and of a fair division of the public property: provided, however, that the action of the said commissioners shall be subject to the approval or disapproval of this General Assembly.

2. The said commissioners shall enter upon their duties without delay, and shall receive the same pay and mileage as members of the General Assembly while actually engaged in the discharge of them; and they shall, within the next sixty days after their appointment, make a full report of their proceedings to this General Assembly.

3. This act shall be in force from and after the passage thereof.

The Master: These last two are subject to the same conditions.

Mr. Holt: Now, I think, your Honor—

Mr. Conrad: Let us agree to this, it is hereby stipulated and agreed between the parties to this cause by counsel that the foregoing Acts and public documents above recited are regarded as in evidence as if fully set out herein.

The Master: You can arrange that detail later on. We will suspend here until 2 o'clock, with the understanding that you come in with your full list this afternoon, so that we can put it right in.

At this point a recess was taken until 2 P. M.

AFTER RECESS.

Mr. Holt: We introduce an Act of the General Assembly of Virginia directing the Board of Public Works to sell the State's interest in the various internal improvement companies, approved March 28th, 1871, and found in Chapter 210 of the Acts of General Assembly of Virginia, 1871-1872.

We also introduce an Act passed by the General Assembly of the State of Virginia, January 17, 1872, and which is Chapter 17 of the Acts of said Assembly of 1871-2.

[Acts inserted two paragraphs below.]

The Master: What is the purpose of these two Acts? That is, do they elaborate any of the other topics to which you refer, or do they relate to a new matter?

Mr. Holt: They might come under the head of the Sinking Fund.

ACTS OF ASSEMBLY, 1870-71, Page 299.

Chap. 210.—AN ACT Directing the Board of Public Works to Sell the State's Interest in the Various Internal Improvement Companies of the Commonwealth.

Approved March 28, 1871.

1. Be it enacted by the General Assembly, That the Board of Public Works be and the same is hereby authorized and directed, to sell to each railroad and internal improvement company in this State, the interest of the State in the same, including all bonds, stocks, loans and claims

(for the sale of which provision has not already been made by law), for an equal amount of State bonds, except the stock held by the State in the Richmond and Petersburg Railroad Company, which stock the Board of Public Works is hereby authorized and directed to sell to Henry K. Ellyson, Joseph R. Anderson, Isaac Davenport, junior; Fred R. Scott, Franklin Stearns, John B. Davis, James H. Cox, A. F. Harvey and Reuben Ragland, at the rate of one hundred and fifty dollars for each share of said stock, payable in registered or coupon bonds of the State of Virginia, at par, within six months after the passage of this act, according to the provisions of a proposal to purchase said stock, signed and sealed by the parties aforesaid, and dated on the sixth day of March, eighteen hundred and seventy-one; which proposal is hereby accepted and made a binding contract between the State and the said parties; and the clerk of the House of Delegates, with whom the said contract is now filed, is instructed, on the passage of this act, to deliver it to the Board of Public Works: provided, that before this sale shall be made, the Board of Public Works shall obtain from the Richmond and Petersburg Railroad Company a valid contract, binding said company to allow any connecting work all proper facilities in and for the formation of a physical junction with the railway track of the same, and that it shall make no higher rates of charge on freights and passengers coming from the line of any such connecting work, and destined for the line of any such connecting work, than is made by said company, or the like class of freights and passengers for transportation on its own line for the same distance: provided, such connecting work shall observe the same rule in its charges for the transportation of such freights and passengers, and to permit the Atlantic, Mississippi and Ohio Railroad Company to build and construct a road track upon its road bed and across its bridges for its own use, upon such terms as may be agreed upon between the said companies; and if they fail to agree, then upon such terms as may be fixed by the Board of Public Works, as an arbiter between them: and provided further, that if the sale provided for in this section shall, for any cause, not be completed within six months from the passage of this act, then the Board of Public Works is hereby empowered and expressly directed to sell the State's interest in the Richmond and Petersburg Railroad, to the Atlantic, Mississippi and Ohio Railroad for one hundred and fifty dollars in State bonds for every share of said stock.

2. Any company desiring to avail itself of the provisions of this act, shall signify to the Board of Public Works its acceptance of the same, within six months from its passage, and thereupon it shall become binding and obligatory upon it.

3. Any company accepting the provisions of this act shall, within twelve months from the passage of the same, deposit with the treasurer of the Commonwealth, State bonds to an amount equal to one-sixth of the whole interest of the State in said company, whether the same consist of stock, bonds, or claims; and the fact of such deposit shall be certified by the treasurer to the Board of Public Works, who shall thereupon surrender to said company an equal amount of the State's interest in such

company. And said company shall, every twelve months thereafter, make a like deposit, and the Board of Public Works shall surrender a like interest, until the whole interest of the State shall have been paid for and surrendered; it being the intent and meaning of this act that the interest of the State shall be sold and the same purchased by the company, in six equal instalments, the first to be made within twelve months from the passage of this act, and one instalment every twelve months thereafter, until the whole purchase shall have been completed. But such company may anticipate all or any of said instalments, and receive such interest as it may pay for, from time to time.

4. In any purchase and transfer, under the provisions of this act, that interest which is the least valuable, shall be first purchased and surrendered, and the claims and securities held by the State shall continue to draw interest, and the same shall be paid as now provided by law, so long as the same are held by the State. And upon the transfer, by the Board of Public Works, to any company, of any stock under the provisions of this act, every stockholder shall be entitled to cast one vote for each share of stock held in the company, at all meetings of the stockholders thereafter held. And the stockholders shall determine what disposition shall be made of the stock so transferred and acquired, with power to extinguish, reissue, sell or hypothecate the same, after the whole interest of the State in such company shall have been paid for; but whilst said stock is held by the company it shall not be voted on in any meeting of the stockholders of said company.

5. If any company, after accepting this act, shall make default in the payment of any of the instalments as herein provided, the Board of Public Works is authorized and directed, after sixty days' notice to said company, to take such steps as to it may seem for the best interest of the State to enforce the conditions of the same; and for that purpose may institute a suit or suits for the recovery of the amount due, or if the State prefer, then the defaulting company shall after a lapse of three months from and after such default, return to the State all stocks, bonds, loans and claims acquired by it under this act, and the State shall be as fully reinvested with all its rights over and to the same, as if this act had not been passed; and thereupon the State bonds delivered to the State by said defaulting company shall be returned to said company, but without interest while remaining in the State treasury. And further, upon the happening of such default by said company, the State shall have one vote for each share of stock owned or held by it in the company so defaulting.

6. The privilege of purchasing the interest of the State in any work of internal improvement, under the provisions of this act, shall remain in such company unimpaired for six months after the passage of this act, within which time the stockholders of such company, in general meeting assembled, may waive any exemption from taxation now enjoyed by them, whether such exemption is allowed by its charter or by law, and if the company shall so waive the exemption, this act shall for the future be taken to be a part of such charter, as fully as if specially re-enacted with reference to such company; and should no such meeting of

stockholders be called or if called, shall refuse to make such formal waiver of exemption from taxation, then the Board of Public Works shall proceed to sell the interest of the State in such work of internal improvement, in the manner prescribed by section eight of this act.

7. All State bonds and stocks received by the treasurer under the provisions of this act, shall be by him forthwith turned over to the second auditor, who shall hold the same, subject to the future action of the General Assembly.

8. If any internal improvement company of the State shall fail or refuse to accept the provisions of this act within six months after its passage, then the Board of Public Works are hereby authorized and directed to sell the stocks and interest held by the State in said companies, to the highest bidder, at public auction, after sixty days' notice, published in the papers of the city of Richmond, for the best price that can be obtained for them, payable in the bonds of the State at their par value. At any such sale, any company may become a purchaser of the State's interest in said company. But no such sale shall be made under the authority of this act for less than the original cost of said stocks and interest, or for less than the market value thereof.

9. This act shall be in force from its passage.

ACTS OF ASSEMBLY, VIRGINIA, 1871-72.

Chap. 17.—AN ACT to amend and re-enact the eighth section of an act entitled "An act directing the Board of Public Works to sell the State's interest in the various internal improvement companies of the Commonwealth," approved March 28, 1871.

Approved January 17, 1872.

1. Be it enacted by the General Assembly, That the eighth section of "an act directing the Board of Public Works to sell the State's interest in the various internal improvement companies of the Commonwealth," approved March twenty-eighth, eighteen hundred and seventy-one, be amended and re-enacted so as to read as follows:

"§8. If any internal improvement company of the State shall fail or refuse to accept the provisions of this act within six months after its passage, then the Board of Public Works are hereby authorized and directed to sell the stocks and interest held by the State in said companies to the highest bidder, at public auction, after sixty days' notice, published in the papers of the city of Richmond, for the best price that can be obtained for them, payable in the bonds of the State at their par value. At any such sale, any company may become a purchaser of the State's interest in said company; but no such sale shall be made of any stocks,

bonds, loans or claims held by the State in or against the said companies for less than the par value of such stocks, bonds, loans or claims and the interest which may have accrued and is now due thereon, or for less than the market value thereof, where the market value exceeds the par value of said stocks, interest, etc.

2. This act shall be in force from its passage.

It is stipulated of record by counsel for the States of Virginia and West Virginia, as well as by counsel for the Bondholders, that the stocks and loans mentioned in Classes B, C, D, E, F and G of the defendant's supplemental answer filed herein were subscribed for and made the authority of legislative enactment by the State of Virginia, and were paid for and made out of the proceeds of the sale of a part of the bonds representing the debt of Virginia existing prior to January 1st, 1861.

Mr. Holt: That saves us from 61 Acts, as we saw it.

The Master: The counsel for Virginia and the Bondholders need have no feeling of annoyance and disturbance about this stipulation, because, if it should turn out that it was inadvertently made, it will simply be wiped out, and we will start over again.

Mr. Holt: Suppose it should turn out that it misrepresents their view or ours.

The Master: Yes, either side would have the opportunity of having the necessary change made in it. You need not either of you understand that you are bound even by this. Of course if nothing is said about it, it goes. But if either side finds on reflection that it is not adequate, it may be made adequate by further stipulation or by evidence on either side.

Mr. Lilly: This morning there was a stipulation entered into with reference to Acts requiring the banks to make certain reports, Chapter 58, Sections 25, 26 and 27 of the Code of 1849, page 306. That is not a very long act, and after looking it over we have decided we would prefer the full Act extended, that is those three sections.

The Master: I shall let you print it.

Mr. Lilly: It specifies certain features which we think would be of help.

CODE OF VIRGINIA, 1849.

(Pages 310 and 311, Part I.)

REPORTS TO THE STATE AND ITS POWER TO EXAMINE THE BANKS.

Sec. 25. The board shall annually in January, and quarterly thereafter, transmit to the Governor a statement of the condition of the bank on the first day of the month, wherein shall be specified the amount of capital stock subscribed, with the amount paid and the amount unpaid thereon, the value of the real estate of the bank, the total amount of debts due to and from it, noting specially the amount of dealings in exchange, and the premiums paid thereon, and also bad and doubtful debts; the amount on hand of gold and silver and other coin; amount of money deposited; amount of each denomination of bills in circulation, and the aggregate of the whole; amount of bills on hand of solvent banks incorporated by this State, and also of those incorporated elsewhere; and the rate and amount of the last dividend of profits, with the amount of the surplus or contingent fund; which statement shall be signed by at least a majority of the directors, and verified by the oath of the president or cashier.

Sec. 26. In addition to the said quarterly statements, the several banks shall report to the Governor a comparative statement of their condition for the corresponding quarter of the preceding year, and the Governor shall have the same published in at least two newspapers in the city of Richmond.

Sec. 27. There may at any time be an inspection of the books and examination into the proceedings of any bank, by a joint committee of the two houses of the General Assembly, or a committee of either house, or one or more commissioners appointed by the Assembly or the Governor.

Mr. Holt: Now in explanation of, or in addition to Defendants Exhibit 10, and the sub sheet to Exhibit 10, we offer, upon the subject of the collection of taxes, when they fall due, etc., and are collectible, portions of Chapter 36 of the Code of Virginia of 1860. We will try and point out such sections of that as we want.

The Master: This Act goes in, subject to the suggestion that it is to be inspected by the other side, and if counsel on each side are able to agree on a summary that will adequately state, from the standpoint of either side, the substance of this statute,

that will shorten the record, they are at liberty to do so.

Mr. Holt: I believe about all we have to ascertain from that is, under the Act, when the assessments were made.

Mr. Conrad: I think we can stipulate that.

The Master: If you do not stipulate, the Act goes in. If you do stipulate, the Act goes out. I do not want to take time to stipulate it now.

Mr. Holt: And under the same circumstances, and for the same purpose, we likewise offer the Chapter 35 of the Code of Virginia of 1860. I have no doubt we will be able to stipulate as to that.

The Master: That is subject to the same suggestion of stipulation.

Mr. Holt: That covers the subject of assessments and taxes on personal property.

The Master: That goes in subject to the same suggestion. Of course the examination of these various Acts, and the arranging of these stipulations, is going to involve some work on the part of counsel outside of the session. I cannot sit here and discuss those stipulations, because it takes too much time. There is quite a lot of this material that is going in here, subject to this suggestion that I have made, that if you agree among yourselves to stipulate as to the effect of this legislation, then all you need to print is the stipulation. My notion of the better way to get those stipulations up is not to discuss them back and forth together here, but to sit down and write them out, and you are much more likely to get the proper stipulation than you are when we make the suggestion offhand from side to side here in the hearing, and it does not take the time of the hearing. I do not want to take the time of the hearing to make any effort to agree on any of these stipulations from now on. Now, Judge Holt, let us have your next suggestion.

Mr. Holt: By reference to page 41 of the supplemental answer, you will find this allegation:

"She says that the State of Virginia, as this defendant is informed, has received from time to time, in addition to the amounts hereinbefore set out in paragraph six of this supplemental answer, dividends upon the bonds, stocks and securities

hereinbefore described to an amount equal to $5,782,240.09, and did likewise, at the time of the separation of the two States, retain, without accounting unto the State of West Virginia for any part thereof, all of the public buildings," etc.

We thought we had our schedules complete, but we omitted them, and now we want to introduce some schedules upon this subject, not for the purpose of utilizing them for the reduction of the debt, but upon the subject of interest, for the purpose of showing that we—

The Master: You mean the reduction of West Virginia's indebtedness to Virginia, when you say the reduction of the debt?

Mr. Holt: Yes. Not for the purpose of reducing West Virginia's indebtedness to Virginia, but as having some bearing upon the question whether or not we should be charged with interest upon that indebtedness. I recall that in the argument before the Supreme Court, Chief Justice White kept distressing me more or less by asking for some broad equity or equitable reason why we should not pay interest, and our theory is that this is one of those broad equities.

Mr. Conrad: Judge White in his oral opinion included in it a reference to the subject of interest, but in the opinion as published it is omitted. I did not find it in the opinion that is published. This question of interest is submitted to you for report, and you have it before you, have you not?

The Master: Yes.

Mr. Conrad: In his oral opinion—I was sitting very near to him and was struck with the fact, and gratified by it, but when the opinion came out I observed that the question of interest was omitted from it. The newspaper reports of his opinion contained a reference to the subject of interest.

Mr. Anderson: All the issues raised in the answer are referred to the Master.

The Master: Whatever the original opinion may mean, I suppose I am confined to it. These schedules are introduced, as I understand it, not for the purpose—

Mr. Holt: I only want to identify them and mark them and then I will drop them.

The Master: That is right. These schedules are introduced

not for the purpose of affecting any particular sum that may be due, but for the purpose of shedding some light upon the question as to whether or not the State of West Virginia is liable to interest on such sum as may be due.

Mr. Holt: That is it exactly, that is the situation.

CONWAY W. HILLMAN,

recalled for further re-direct examination, testified as follows:

By Mr. Holt:

Q. Mr. Hillman, have you prepared an exhibit showing the various amounts of dividends received by the State of Virginia from stocks held by said State subsequent to June 20th, 1863?

A. Yes, sir, I have.

Q. Were they dividends upon stocks that she had acquired prior to January 1st, 1861?

A. Yes, sir

Q. Of how many sheets does that exhibit consist?

A. Of seven sheets.

Q. Are they numbered by pages?

A. They are numbered by sheets in the upper left-hand corner.

Q. They are numbered by sheets, then?

A. Yes, sir

Q. Do these sheets, or does this exhibit, show upon its face the sources from which it was made up?

A. Yes, sir

Q. Does this seven sheet exhibit correctly represent the books and documents from which it is taken?

A. Yes, sir.

Q. Is it correct?

Mr. Conrad: You mean whether they are correctly copied or transcribed, but not correct in fact.

A. Yes, sir.

By The Master:

Q. Has this schedule been checked up with Mr. Potter?

A. No, sir.

The Master: Have that checked up so that we can clean this up with the other.

Mr. Holt: You see we are going between times as hard as we can go.

By Mr. Holt:

Q. Where is the one on interest?

A. Commencing with sheet 5.

Q. Well, then, did the whole seven sheets of the matter that I have been talking about cover dividends at all?

A. No, sir, they did not.

Q. Of how many sheets is that statement composed?

A. Three.

Q. And how are they numbered?

A. In the upper left-hand corner sheets, 5, 6 and 7.

Q. Do these interest sheets state upon their face the sources of information from which your schedule or statement is made up?

A. Yes, sir.

Q. Do they correctly represent and state the contents of the records, books and documents from which they are taken?

A. Yes, sir.

Q. Now, I will ask you to file sheets 1 to 4, inclusive, and mark them as Defendant's Exhibit No. 12, 1863. Will you do so?

A. I file them so marked.

The schedule was admitted in evidence and marked Defendant's Exhibit, No. 12, 1863 (four sheets), September 9th, 1914, C. B.

Q. And I will ask you to file the sheets from 5 to 7 inclusive, covering the subject of interest on loans, and mark them as Defendant's Exhibit No. 13, 1863. Will you do so?

A. I file them so marked.

The schedule was admitted in evidence and marked Defendant's Exhibit No. 13, 1863 (three sheets), September 9th, 1914. C. B.

The Witness: I would like to call your attention to the fact that the total then of Defendant's Exhibit 12 will be carried forward and included in the total mentioned on Exhibit 13.

Q. Do you mean on the summary?

A. Yes, sir.

The Master: That is next?

Mr. Holt: That is all on that subject, I believe. Now, this exhibit has the same bearing as the one last introduced, but it is to cover the dividends declared on stocks after January 1st, 1861 and I suppose down to June 20th, 1863; is that right?

The Witness: Down to the present time.

Mr. Holt: Of course that is in the alternative as to which date might be adopted as the proper date of settlement.

Q. Have you prepared an exhibit, Mr. Hillman, showing the amount of dividends received by the State of Virginia after January 1st, 1861, declared upon stocks acquired by her prior to that date?

A. Yes, sir, I have.

Q. Of how many sheets does this consist?

A. Of six sheets.

Q. How are they numbered or indicated?

A. In the upper left-hand corner, sheets 1 to 6, both numbers, inclusive.

Q. Have you prepared a corresponding exhibit upon the subject of interest covering the same dates?

A. Yes, sir.

Q. How are they indicated?

A. Sheets 7 to 10 printed in the upper left hand corner.

Q. Do both of these exhibits indicate upon their face the sources of information from which they were made up?

A. Yes, sir, they do.

Q. Do they correctly represent the documents, records, etc., thereon indicated from which they are made up?

A. Yes, sir.

Q. Will you file the one relating to the dividends on stocks, being sheets Nos. 1 to 6, inclusive, and mark it Defendant's Exhibit No. 12?

A. Yes, sir, I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 12, 1861 (six sheets), September 9th, 1914, C. B.

[This exhibit is printed as "Defendant's Exhibit No. 12, 1861—ten sheets."]

Q. Will you likewise file the one relating to the subject of interest upon loans, as a part of your testimony, running from pages 7 to 10, inclusive, and mark it as Defendant's Exhibit No. 13?

A. Yes, sir, I file it so marked.

The paper was admitted in evidence and marked Defendant's Exhibit No. 13, 1861 (four sheets), September 9th, 1914, C. B.

[This exhibit is printed as "Defendant's Exhibit No. 12, 1861—ten sheets."]

The Master: Neither of these last two exhibits affects in any way the principal sum due, but are only to be used so far as they may be pertinent in determining the interest upon whatever sum may be found due?

Mr. Holt: That is it exactly.

Q. Mr. Hillman, the Master asked you this morning to ascertain and file a statement, if you could, made up from the books of the James River and Kanawha Canal, showing a balance sheet thereof or whatever you could get upon that subject from its books. Have you any such statement prepared?

A. No, sir. My man is working on that now over at the C. & O. office on what information he can get. The original books, so he informs me, of the J. R. & K. were burnt in 1865, when Richmond was taken, or to a large extent destroyed, but that he has some documents there from which he thinks he can get the

data that I desire, and he is working on it now. Also, I would say, your Honor, that as soon as I can finish here we will complete the statement that you desired of the Richmond, Fredericksburg & Potomac Railroad, which I expect to have ready to file the first thing in the morning.

The Master: Any time before we conclude the hearing will take care of that, leaving opportunity enough to cross-examine if desired, and I tell you what I would like to have you do when you complete these schedules, submit them to Mr. Potter and have him verify them so that when we get all through I want Mr. Porter if it is possible to be able to say that he has compared all these computations and all these statements of facts, and so far as their accuracy is concerned, he has no criticism to make, so you keep right in touch with him and let him verify it.

Q. Then there is one other exhibit that I understand you have in course of preparation, and that is a statement showing the cost of public buildings in the State of Virginia. Is that true?

A. Yes, sir.

Mr. Holt: That of course is to be addressed to the same subject of interest—that is not to be taken as a deduction of principal.

Mr. Lilly: Mr. Harrison, you heard what Judge Holt was stating with reference to the value of State buildings, and so on. Do you think that you people could come to some stipulation as to what they were reasonably worth in 1861?

The Master: Take that up with them outside, during some intermission.

Mr. Lilly: I might suggest that we think it does not show what it was worth, but the Bennett Commission in the early 70's found them worth $3,875,000.

The Master: See what you can do on that question, between the counsel.

Mr. Holt: I do not see Mr. Potter here, but one matter was left open this morning on this question of taxes, collected by Virginia from West Virginia counties, that he and Mr. Hill-

man were to check up. I want to straighten that out. How is that, Mr. Harrison?

Mr. Harrison: I think that will be all right. We won't keep Mr. Hillman to testify to that. I understood from Mr. Potter that he had checked up with him, and that he would be prepared to say whether it was subject to amendment. I do not think it is.

Mr. Holt: So that Exhibit 10 and the sub sheet to it stand as produced this morning.

Mr. Harrison: Mr. Potter is not here, but I think so.

The Witness: Here is one thing, the item of $8,010.30, that is marked no date; in other words, the date is uncertain. That is the reason that there are two totals on that sheet.

The Master: I will suspend here for five minutes, and then I expect West Virginia will be prepared to clean up in chief.

Mr. Holt: We expect to be able to clean up this afternoon with the exception of bringing in those schedules to-morrow morning, and one witness on oral evidence to-morrow morning.

Mr. Holt: We would like Mr. J. K. Anderson sworn, and Mr. Lilly will examine him.

J. K. ANDERSON,

called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Lilly:

Q. What is your name?

A. J. K. Anderson.

Q. What is your residence?

A. I reside in Charleston, West Virginia.

Q. What is your occupation?

A. Chief Engineer of the Public Service Commission of West Virginia.

Q. Have you taken any course in engineering, and if so, when?

A. I graduated in engineering with the degree of Bachelor

of Science in Engineering in 1899 from Swarthmore College.

Q. Since then, have you been occupied in that work from time to time?

A. I have been occupied in engineering the greater part of the time since that date.

Q. Have you had occasion to make an investigation with reference to any improvements on file in the archives of the State of Virginia?

A. I have.

Q. Did you find a map bearing date 1859; if so, please state where you found it?

A. I found a map in the office of the State Librarian of Virginia in this building with the following title.

Q. Please read it.

A. Map of the State of Virginia reduced from the nine sheet map of the State in conformity to law by Herman Boye, 1828, corrected by order of the Executive by L. V. Buckholtz, 1859, with a scale which is practically one inch equal to ten miles.

Q. I see you have a blue print here representing certain railroads and canals. From what were they taken?

A. A tracing was made from this map just mentioned in the Library of the State of Virginia on which I showed the different railroads in which the State of Virginia was interested by investment of moneys in some form. I also showed or traced from this map the James River and Kanawha Canal and the Chesapeake & Ohio Canal, the Dismal Swamp Canal, the Alexandria Canal—

Q. You traced the various navigation and canal projects as shown on that map, did you?

A. I did.

Q. The map, I believe, purported to show the railroads built and located as of the year 1859. Did you do anything to bring the map down to show the location of the railroads as of January 1, 1861?

A. I did.

Q. In what way did you do that, Mr. Anderson?

A. I examined in the office of the Librarian certain copies of Document No. 17, which were reports of public utilities to

the Virginia State Board of Public Works, and from the various reports therein made for subsequent years I ascertained what extension, if any, should be added to the map before mentioned in order to show the situation as of January 1st, 1861.

Q. Take the railroads as laid down on the map of 1859, together with the extensions as indicated in this report that you refer to, or document of Virginia, does this map truly and correctly lay down the railroads as then constructed and located?

A. It does. I would like to say in this connection, by way of explanation, that that map of 1859, to which reference has been made, showed two classifications; it showed railroads finished and railroads unfinished; it showed canals finished and canals unfinished. For the better understanding of conditions as then existing, I have on this map which I have prepared shown the following designation, a solid red line to show railroads in operation, a dashed red line to show railroads under construction, and a dotted red line to show railroads located.

Q. These various canal navigation companies, as I understand it, are copied correctly from the map of 1859?

A. The map of 1859 did not show any navigation companies.

Q. How did you place them on?

A. I ascertained the location of these navigation projects as best I could by examination of maps wherever filed with the State Corporation Commission.

Q. Of Virginia?

A. Of Virginia.

Q. They were the official maps and data and documents of that commission?

A. Yes, sir. I found very few of those maps; and I have indicated on this map more the streams, without showing the particular amount of stream which was improved. I was unable to ascertain just the extent of the improvement on these various streams, but have indicated with a green color over small circles, and connected with a single straight line, the location of the streams, and perhaps approximately what proportion of those streams was improved. That part was unknown to me.

By The Master:

Q. Do you refer to the canalization of the streams?

A. No, sir, I refer to the old improvement projects, not the canals.

By Mr. Lilly:

Q. Were the canals laid down on the map?

A. The canals I have heretofore mentioned, with the exception of Kempsville Canal, were shown on the map on file with the State Librarian.

Q. Have you the James River and Kanawha Canal laid down as laid down on the map of 1859?

A. I have, in so far as it was contstructed or finished. There was some projection of unfinished canal which I have not laid down here on the map.

Q. I see here a red star for banks, a square with half of it red, marked Asylums and Hospitals, and a red triangle for Schools, and a red diamond for other public buildings. Have you correctly located those various objects on the map?

A. I have.

Q. And were those institutions located as of January 1st, 1861?

A. I want to say, I had no particular knowledge as to that date. I have located these institutions last mentioned in accordance with a list which was handed to me by the State of West Virginia's counsel.

Q. The purpose was to locate these institutions that existed on and prior to January 1st, 1861?

A. I so understood it, but I have no knowledge myself of whether they were in existence at that time or not.

By The Master:

Q. You have placed them on the map on the assumption that they were?

A. Yes, sir.

Q. But that information you received from counsel?

A. Yes, sir.

By Mr. Lilly:

Q. If they existed at that time, are they correctly located?

A. They are.

Q. I see that the names of the various railroads are written thereon. Are they transcribed from that map in the main?

A. Yes, sir.

Q. There has been some reference to the Manassas Gap Railroad. I wish you would tell the Master the beginning of that road, where it begins, and where it ends; that is, of January 1st, 1861?

A. The road began at a point on the Orange & Alexandria Railroad, 27 miles west of Alexandria. There was nothing to indicate it at the time, but at Manassas, I presume, and went in a westerly direction to Strasburg, and then southwesterly to Mount Jackson, with a further amount of road under construction as far as Harrisonburg.

Q. Mount Jackson would be at the end of the heavy red line?

A. Yes, sir, at the end of that line.

Q. South of Strasburg, about the two letters RR?

A. Yes, sir.

Q. When was that road completed to Mount Jackson?

The Witness: I should like to refer to some of my notes.

The Master: Certainly.

A. I found on Document No. 17 for the year 1860, in the office of the State Librarian, on page 207, the president's report on the Manassas Gap Railroad. This report was made to the stockholders, and I should like to quote from that.

Q. Go ahead.

A. "The road has been in use as far as Mount Jackson during the twelve months ending the 30th of September, 1860, five months longer than the use of the same part during the previous year."

Q. When was the road constructed from Mount Jackson on to Harrisonburg?

A. I presume that the road was constructed during the year 1860, and perhaps 1861, between those points.

Q. Upon what do you base that presumption?

A. I should like to quote again from the same volume, page 208, of the same report: "The whole line between Harrisonburg and Mount Jackson under contract and full force at work." Then I have contracted a little by leaving out some unessential words. "The engineer advises against track laying until spring Every step preparatory to commencement at that time has been taken, rails ordered are ready for shipment; contracts for crossties let; bridge timbers partly in place; bridge masonry and excavation all in such state of forwardness as leaves no obstacle to the beginning of work of track laying as soon as frost leaves the ground in the spring, and of the uninterrupted continuation of work which insures its completion to Harrisonburg by the 1st of October next."

Q. What October would that be?

A. That would be October 1st, 1861.

Q. Where was the road constructed, if you know, in 1859, how far?

A. I should like to quote from Document No. 17 for the year ending September 30th, 1859, on page 241: "On March 1st trains ran from Alexandria to Mount Jackson, 12 miles beyond Woodstock on the valley line. A considerable part of graduation and masonry between Mount Jackson and Harrisonburg is now done. $350,000 additional appropriation with funds on hand will complete to Harrisonburg within 18 months from the time when work is started."

Mr. Holt: That was in 1859?

The Witness: This was a report as of September 30th, 1859.

Q. Suppose you read the rest of that note or report.

A. "The independent line to Purcellville and Loudoun Branch still lies half done. Sections 104 and 105 two miles north of Harrisonburg under contract by Shands, contractor, and thirteen miles under his charge now more than two-thirds graded, can be finished within the coming year. The whole length of first track laid on main line and branches, exclusive of second track and siding, is 86.73 miles. The Orange & Alexandria R. R. from Alexandria to Manassas Jct. is twenty-seven miles." That is the end of the quotation.

Q. Do you understand that the line between Manassas and Alexandria was owned by the Manassas Gap, or was it under a lease?

A. It was leased.

Q. Upon what do you base that? Read the record there.

A. In document No. 17, for the year 1860, also to be found in the State Librarian's office, on page 229, I find the following reference to Manassas Gap Railroad, in one of their reports. It is given in this way: "Item 98. Branch lines leased, rented or run by company." On the next line below that, "Of the Orange & Alexandria R. R. from Alexandria to Manassas Junction, 27 miles."

Q. What was the length of the main structure of the Manassas Gap, do you say?

A. They give in this same table on the same page—

Q. Read that table.

A. It reads as follows: The heading of the table is as follows: "Table C. Characteristics." Then the next line—these questions are all numbered, or the answers to them—"80. Length main line, Alexandria to Harrisonburg, 139.30 miles." The next one is, "81. Length of single track laid, 77.77 miles." I omitted one or two. And then comes, "84. Branches or other lines owned by company. To Harper's Ferry, 44.12 miles. From Orange and Alexandria road to Gainesville, 7.96 miles. From main line to Front Royal, 1.00 mile." The next line is, "85. Length of single track laid on same, 8.96 miles." The next is 97; I skip some lines. "97. The whole length of first track laid on main line and branches, measuring the road, exclusive of second tracks and sidings, 86.73 miles." That completes the abstract.

Q. Do you know when the Manassas Gap began construction?

A. I do not. That was a matter that I was looking up, but I had not determined that when I was called.

Q. Will you please find that data and give it to the stenographer later?

A. Yes.

Q. What was the length of the James River & Kanawha Canal as of January 1st, 1861; that is, the completed part?

A. Approximately, 195 miles from Richmond to Buchanan, going west along the James River.

Q. Did it have a branch line?

A. It did, the branch to Lexington, which was approximately 22 miles from Lexington on the north fork of the James River to its mouth at Balcony Falls.

Q. What, then, would be the entire length of the constructed part of the canal as of January 1st, 1861?

A. About 217 miles.

Q. Is there a tow path in connection with the canal?

A. Yes, sir.

Q. I wish you would describe to the Master the width and nature and general features in connection with the tow path.

A. The canal consists of a bed in which the water was held, with a tow path on one side which varied in width according to the amount of material which they removed from the bed of the canal in the work of construction. This width, so far as I could notice—I did not measure the width—was from 14 to 25 or 30 feet wide.

Q. What was the condition of the two path with reference to being level?

A. It was perfectly level between locks. At that point at the time I inspected the canal, there had been grading done to adapt it to railroad construction. The part of the upper lift at the lock had been cut down somewhat, and an incline approach had been created or filled from the lower level of the tow path to the upper level.

Q. It is in evidence, Mr. Anderson, that the James River & Kanawha Canal Company was transferred to the Richmond & Alleghany Railroad Company, and that that company constructed a railroad along this tow path. I wish you would give the Master your best idea as to how much additional excavation and work would be necessary to change the tow path into a road bed for railroad purposes?

A. I did not examine that especially with that question in

view; but I should assume that the percentage would be small, not over five or ten per cent. additional graduation work being required to adapt that old tow path and the structures that were then in use for the canal to the railroad bed and uses of the Richmond & Alleghany Railroad.

Q. Then the tow path was of practical railroad grade for the Richmond & Alleghany, with the addition of perhaps five or ten per cent. additional grading; is that correct?

A. Yes, sir.

By The Master:

Q. Did this extend the whole length of the canal?

A. This extended for practically the whole length of the canal. There were certain points which, by reason of the short curvature on the tow path of the canal, where sharp rocks jutted out into the old James River bed, that made it necessary for them to leave the tow path at those places. At some other places, by reason of the better location, the old right of way of the James River & Kanawha Canal was left entirely, and they proceeded to acquire a new right of way and constructed their line in an entirely different location.

By Mr. Lilly:

Q. About how much of this entire length of right of way was not utilized by the Richmond & Alleghany?

A. I could not answer that. I have some right of way map sheets.

Q. We will come to that a little later. Just give your best idea?

A. I would suppose not over five or ten per cent.; that is a rough guess.

By Mr. Holt:

Q. You do not mean, Mr. Anderson, that that part of the tow path that was involved in the Branch Canal up to Lexington was used, do you?

A. Yes, sir.

Q. Did the Richmond & Alleghany build on that, too?

A. Yes, sir, to within a mile or so below Lexington, as far as the old tow path extended.

By Mr. Lilly:

Q. You spoke with reference to locks in the canal. Were they of value for any purpose outside of the use proper of the canal, if the canal should quit being used for canal purposes?

A. I would think not. Certain dams were built in connection with the canal which were useful for power purposes.

Q. Where were those main dams located?

A. There was one at Bosher's Dam.

Q. When did you make your examination of the road?

A. That was in August.

Q. This last August?

A. Yes, sir.

Q. As I understand it, you personally inspected the whole length of it?

A. I made an inspection like this, your Honor, I secured map sheets of the old Richmond & Alleghany Railroad Company, blue prints of their original tracings, which showed the old canal bed, the right of way of the old James River & Kanawha Canal Company, the location of locks, the lock keepers' houses, the dams, and in addition to that it also showed the center line of the Richmond & Alleghany Railroad as laid down upon the old tow path or where it may have left the path, and it also showed the additional right of way acquired by the railroad company in their construction work. I took those maps, which were to the scale of one inch equals 200 feet, and which were marked corresponding with the number on the mile posts, so that it was divided up, each sheet showing one mile section. I went up on the morning train and made at best only a horseback observation of each mile section, in connection with each one of these sheets, putting down the estimated valuation of the cost of grading, taking into consideration the additional work necessary to be done at the locks, and estimating as best I could roughly about what the right of way might be worth for those several miles. That was as to the upper part and where the rail-

road track followed closely the tow path. For the lower end I took my sheets, showing the old Richmond basin, which was at the lower end of the canal, and also the dock property connecting that old canal with tide water at about 28th street, in Richmond.

Q. So that, in the main, your information is drawn from the original sheets?

A. With those to guide me. This was only a horseback estimate.

By Mr. Lilly:

Q. Could you tell where the tow path ran with reference to where that railroad ran?

A. Very readily.

Q. You could do that from the blue prints you had?

A. You could observe the curvature, also the mile posts; also the old canal bed, the old locks, the lock keepers' houses and the two path itself at frequent intervals.

Q. How could you observe the tow path? Explain that to the Master.

A. At some places the original tow path, or at least the fill, which was made out of or arising from the excavation, extended wider than the road bed or the track and ballast as actually laid out.

Q. The track would be about 14 feet wide, wouldn't it?

A. Usually they had the width of fills at the top about 14 feet wide.

Q. The upper part of the canal you inspected from the rear end of the train with these blue prints and the data you had, and the lower end, as I understand, you walked over with the blue prints and made a personal inspection on foot?

A. Yes, sir.

Q. You say that you estimated the value of the rightof way the best you could, taking into consideration the character of the country, and based your opinion of what it would be worth in 1861?

A. My idea, your Honor, was estimating that as of the date

at which the railroad actually acquired the property and took it over.

Q. That was along about 1880?

A. About 1880.

Q. Did you estimate the value of the excavations and the value of the tow path per mile outside of or separate from the right of way?

A. I did.

Q. At what basis of value per day for work, that is the price of labor, did you take that into consideration?

A. I would like to say, your Honor, that my principal railroad experience in construction work was at a time when labor was worth about $1.00 a day, and I have no knowledge as to the value of labor in 1880, and that this judgment of mine is based largely on about what the work would have cost at the rate of a dollar a day. I do not know what it would be in 1880. My experience was largely in 1889 and 1890.

Q. I do not want to lead, but I want to hurry along. As I understand, Mr. Anderson, as you went along over the road you rode at the end of the train and had these map sheets, and each mile you passed you put down your value of the right of way in one column and then the value of the road bed as made up from the tow path in another column?

A. I made my memoranda directly on those map sheets in yellow crayons, and somewhat abbreviated them, because I put down figures which represented thousands.

Q. Do you have copies of your estimates in that regard?

A. I have none outside of this private report.

Q. Will you please file your estimates of each mile both of the right of way and of the excavations?

A. I will.

The Master: What do you mean by excavations?

Mr. Lilly: In the tow path, that is the value of the excavations in the tow path.

The Master: You mean the excavation out of the canal basin into the tow path?

Mr. Lilly: No, I mean the value in the tow path.

By The Master:

Q. Let me get this exact. What you mean by excavation, you mean what it would cost to excavate from the canal basin and pile into the tow path?

A. No. This estimate of mine was made on this basis, I tried to estimate what the value of that work would be—what the cost of that work would have been to the railroad or what the value of that old tow path was in the matter of graduation to the railroad.

Q. In other words, if the Richmond & Alleghany were going to build a railroad in that vicinity, and there was not any tow path there, your estimate is as to what the tow path as you found it would have been worth to them as a matter of construction that they would have had to make?

A. That was the point, your Honor.

The Master: That is what you mean by excavation?

Mr. Lilly: Yes, sir.

The Witness: Taking into consideration the additional work that you would have to do at each lock to grade a suitable approach.

Q. That is, being the owners of this right of way, estimating that way, it cost them a certain sum less to put the road in that vicinity or in that locality than it would have if the tow path had not been previously constructed by somebody?

A. That is the point.

By Mr. Lilly:

Q. You speak of some extra work having to be done at each lock in order to get the road on grade. About what was the amount of that work at each lock?

A. I don't know; I did not have time to ascertain. I just tried to estimate, making an allowance that I thought would be compensation for each mile as I went along. I cannot recall what it was at each particular lock.

By The Master:

Q. How long were you making this trip?

A. I went up one morning, leaving here about nine o'clock

in the morning, and reaching Buchanan about, I think it was about three or four o'clock in the afternoon, and spent the night at Balcony Falls, and went up the next morning to Lexington.

By Mr. Harrison:

Q. And you made your observations while going up on the railroad?

A. From the rear of the railroad train.

Q. And made your estimate going twenty-five or thirty miles an hour?

A. I suppose we were going that the larger part of the time. It is a horseback opinion, going a little faster.

Q. A kind of lightning calculation?

A. It was simply a horseback opinion, and going pretty fast.

By Mr. Lilly:

Q. As you passed along, could you identify each sheet or blueprint with each mile?

A. Very readily, by the mile posts and also by the curvature in alignment and locks, and things which were marked on the map.

Mr. Lilly: We now offer the following, estimate values of grading and rights of way of the Richmond & Alleghany Railroad Company as of date of 1880, as estimated by J. K. Anderson.

Mr. Harrison: Are you introducing the map, Mr. Lilly?

Mr. Lilly: No, not the map.

The Master: He is introducing the detailed estimate made under these conditions.

Mr. Lilly: Yes, which is as follows: Would you like me to read it?

The Master: Not as far as I am concerned. Have you duplicates of it?

Mr. Harrison: How many pages are there?

Mr. Lilly: There are 195 entries, one entry for each mile.

The Witness: About 217 entries, one entry for each mile. I put the estimated value as to each mile section.

By Mr. Harrison:

Q. How in the world could you make an estimate of the cost of construction or the value of right of way for each mile when flying by at the rate of thirty miles an hour?

A. It is a rough estimate, as I stated.

Q. Could you make it as well if you had been here in Richmond?

A. No, not nearly so well. You would fail to note that here in Richmond, the depth of fill or width of fill.

Q. How could you tell the depth or the width of fill, going by at that speed?

A. You can get a rough idea of it the same as you can riding over it on horseback, of any railroad work.

Mr. Harrison: I did not mean to interrupt you.

Mr. Lilly: That is quite all right. We do not claim that it is accurate to the cent, but it is the best evidence we have.

The Master: What you mean is that it is the best evidence you could get going at that rate of speed?

Mr. Lilly: Yes.

The Master: I do not suppose it would be conceded that a more accurate estimate could not be made.

Mr. Lilly: We agree to that.

The Master: I think Mr. Anderson knows how he could get at that.

The Witness: I was pushed for time, your Honor.

The Master: There is no doubt that you have done the best you could, going at that lightning speed.

The Witness: Yes, sir.

Mr. Lilly: That was going some, was it not?

The Master: It rather strikes me that it was.

By Mr. Lilly:

Q. I wish you would read the summary in reference to the canal.

Mr. Conrad: If your Honor please. I do not think that the

record should be encumbered or that we should go to the expense of copying into the record at all. It is perfectly evident that this gentleman is incompetent to speak of the value of this work. He might just as well have gone over it in an aeroplane. The idea of introducing that great mass of matter here—

Mr. Lilly: It is not a great mass.

Mr. Conrad: The idea of putting that into a record, and if it has to go to the court or has to be paid for, I object to it on that ground. It is not evidence that tends to prove the amount or the value of the cost, or the value of anything. I think the gentleman himself would admit that he would not buy, himself, on the statement of a civil engineer—

By Mr. Conrad:

Q. Were you ever a contractor?

A. No, sir.

Q. Then your business has been simply that of a civil engineer?

A. Yes, sir.

Q. Who ran a level, or something of that sort?

A. A little more extensive than that, perhaps.

Q. Well, perhaps.

Mr. Conrad: I submit that the evidence is incompetent to prove, it does not tend to prove the end which it is introduced for. It is a waste of time and a consumption of money in putting it into the record. I object to it on that ground.

Mr. Lilly: We would have had the figures before you would have got through, Mr. Conrad.

The Master: The objection that Mr. Conrad has is that it encumbers the record with details that are of no value.

Mr. Conrad: And the additional objection that the gentleman, from his own statement, does not show that he is an expert.

Mr. Lilly: If the Court please, there are about five pages of that detail. It begins a mile north—

The Master: That really does not go to the question of its admissibility. Of course, if they raise it seriously I will have to rule on it.

Mr. Lilly: I would like to say a word or two with reference to that. It shows his estimate of the right of way and his estimate of the excavation. It seems to me that when he has a blue print of that particular mile, with a bird's eye view showing the center of the railroad, showing the tow path grade, and showing the whole matter, that he could go along and see this fill and that excavation and the whole situation; it is only an estimate, but whatever it is worth, we think we are entitled to it. Later that is a matter for argument. If they can show that he is wrong, they may do so.

Mr. Conrad: He has not qualified himself as an expert, from his own statement.

Mr. Lilly: There is a railroad 217 miles long that was created that we own 23½ per cent. of, and we are asking for our 23½ per cent. of that value. Now, we have shown what the Richmond & Alleghany considered it worth in 1882, and we are going to show what Mr. Anderson considered it, from his observation, as worth; and a part of it he went over on foot. Whether he is mistaken or not is for them to show, and the weight of it is of course for the Master. But it certainly would have some weight. In other words, as the record stood before Mr. Anderson came on, there is nothing to show that there was a tow path, nothing to show the width or the grade or anything about the physical situation.

The Master: They are not objecting to that. Their objection is that the witness is now undertaking to give an estimate of what it would cost and what it was worth, and what the new right of way construction cost.

Mr. Lilly: No, not the right of way.

Mr. Harrison: The value of it as a railroad right of way and as a canal right of way are two different things. We did not utilize it as a railroad. The stockholders of the James River and Kanawha Canal Company owned a canal right of way. What was it worth as a canal right of way?

Mr. Lilly: What it was worth for any purpose, that is our contention.

The Master: The question raised before me is whether this is competent testimony, and Mr. Conrad raises the question

that the witness has not shown that he is qualified to testify as to the cost or value in 1880 in this locality. Now, I suppose it is a familiar rule of law, that is if the objection is insisted upon, that the witness cannot testify as to the cost of construction in a certain locality unless he has shown in the first instance that he is familiar with that cost of construction at that period of time. That is the first proposition. Then, I understand the witness to say that there are a number of instances here where there is a right of way used by the railroad which is not coterminous with the railroad tow path, and that the general question which you have covers that. Now, I suppose, in order for the witness to be able legally to testify to that he must show that he has some knowledge of what a right of way would cost in that locality at that time. Of course that involves in the first place the cost of the right of way, and in the next place the cost of the construction on the right of way. So if they insist upon it, I do not see but you will have to bring your witness up to a point of showing in the first place, 1880—well, that is nineteen years after the date—that in the first place makes it extremely doubtful as to its value; but in any event, you will have to show, as far as I can see, that the witness has the original knowledge of the conditions that existed in that locality at that time, in order to qualify him to legally express an opinion, without now discussing the evanescent and moving picture character of the description made as the basis for the information he gives.

Mr. Lilly: We can show his experience in making railroad estimates and surveys, and his general information with reference to the cost of construction work.

The Master: I do not see but what you have got to qualify him by showing his knowledge of construction in this locality and vicinity. Of course, I do not know what the witness' general knowledge may be. Here is 1880 as your date. Take, for instance, in the first place, your right of way. Of course, I cannot let this witness testify as to what a right of way would cost on the line of this road in 1880, without some intimation that he knows what the conditions were as to the value of the land that was taken for the right of way. That is so obvious

that it is hardly worth discussing. Your question was broad enough to cover that, for instance. Of course I cannot let Mr. Anderson say what a right of way on this James River and Kanawha Canal would cost in 1880, unless he has some knowledge of what it would cost. His experience in some other place may or may not qualify him generally, but this right of way is located here, and he must have some knowledge of the conditions in this location, and at that time, in order to entitle him to express an opinion of what the right of way would cost at that time. That is the way it seems to me. That is as to the right of way. When you come to the question of the construction, the same general principles apply. I do not know what the fact was about 1880, I do not know what labor cost, I do not know what the factors were.

Mr. Lilly: He bases it on a dollar a day.

The Master: That does not fix it. If a dollar a day was the running price in 1880, why that might furnish a basis. Of course the objection is hardly technical. In the first place, it is nineteen years after the event that you are trying to establish. In the next place, Mr. Anderson has done the best he could with this almost chain lightning examination. The question is whether, under the circumstances, you want to encumber the record with the testimony, under these conditions. Of course, if they insist on it, I should have to compel you to prove cost and value in 1880 in that locality by some witness who had some knowledge of those facts at that time. I understand that to be the rule, and I should have to hold you to it.

Mr. Anderson: I want to say for the benefit of my friends on the other side, it seems to me that there is a more conclusive objection to this testimony than any that has been mentioned. If it be proved that this grading cost fifty thousand dollars a mile, and that it would not have cost but twenty thousand dollars a mile if the canal had not been there, that would have no legal bearing in my judgment upon the real question in this case. The question in this case is, what was the value of Virginia's $10,400,000 of stock. In what? In the James River and Kanawha Canal Company, either on the 1st of January, 1861, or on the 20th of June, 1863. Now, your Honor, any evi-

dence of that sort is too remote to cast any light upon the value of the canal in 1863 or 1861. Why, if that sort of evidence is to go into this case, sir, it will last ten years.

Mr. Lilly: If you force us to send experts to measure it, it will.

Mr. Anderson: I do not think the evidence would be competent if an actual survey had been made by West Virginia. See what it leads to. I happen to know a great deal about this canal and about this railroad. I happened to be counsel upon its upper division for this railroad at one time, and I know something about what it cost. Suppose we could show that that right of way, instead of costing almost nothing, as the witness would seem to indicate, cost, between Lexington and Balcony Falls, over thirty thousand dollars; that as much as three thousand dollars was paid for a single mile of right of way. The company had only a right to build a canal, not a railroad. So that as to some portions of that road, it cost thousands of dollars to acquire the right of way. The witness could have gotten definite evidence if he had wanted to, by going to the records of the Richmond & Alleghany Railroad Company. But it would not be competent here. It would throw no light on the value of the canal in 1863, when there was no suggestion of building a railroad thereon. This railroad, as will be shown here, a very short time after its construction, went into the hands of a receiver, and it was sold. And it will be shown that it was bought for far less than the par of its bonds, and that the stock was absolutely worthless. It was sold to the Chesapeake & Ohio Railroad Company, who did not then pay for it in money, but paid for it in bonds, about six million dollars, according to my recollection.

The Master: I appreciate the significance of these suggestions made by General Anderson, and they are very significant, of course. But of course the question pending here before me is not involved in the objection that he makes. If counsel for Virginia insist upon it, I must hold that a man cannot make a statement as an expert, as to the cost of construction in 1880 on the line of this Kanawha Canal Company, unless he has some knowledge of conditions that existed there at that time

and at that place. This is no impeachment of the intelligence of Mr. Anderson. He knows that as well as I do or any of us do. And my judgment is that Mr. Anderson has done a first-class piece of work under the circumstances and so far as he is able to go. Of course if they raise that point I am obliged to hold that a man cannot qualify as an expert unless he has knowledge of those conditions at that time and under those circumstances. Of course we all know this question of construction sometimes involves more than a few shovelfuls of dirt. And it does involve the actual cost at that time, the cost of labor and all those things. Of course if the counsel for West Virginia feel that they want to go into that detail in connection with that, with Mr. Anderson, my judgment is that Mr. Anderson is not able to legally qualify as an expert on the question of the value of this road in 1880. Now if the West Virginia people feel that they want to go into more elaborate investigation on that point, the question might be raised as to whether or not it is too remote. But that I do not pass on now. My judgment is that Mr. Anderson is not able, under the circumstances, to testify.

Mr. Anderson: It opens up an endless field.

The Master: This is a practical question for the counsel for West Virginia. Mr. Anderson, in my judgment, has done a very nice piece of work, and has gone just as far as any man in his situation could go. He is not responsible for not knowing the conditions in 1880.

The Witness: I was only eleven years old then, your Honor.

The Master: Of course the facts that he has testified to, why that is another thing.

Mr. Conrad: Is not the point that has been made of more significance and force than your Honor gives it? Virginia did not own a foot of this ground.

Mr. Lilly: She owned ten millions of the twelve millions of stock.

Mr. Conrad: But a stockholder does not own the land. The company in its corporate character owns the land.

The Master: I appreciate that.

Mr. Conrad: Now Virginia is charged here with owning ten million dollars of stock, of which these gentlemen claim 23½ per cent. That is of the stock. Great heavens, it is not of the road bed or the canal bed. I have always understood that the stone on that canal was the most costly thing in the internal work of Virginia. It is what was the value of the stock, not what was the value of the road bed. There may have been a gold mine under it.

The Master: Their contention is, that here was a valuable road bed, which is a factor to be included in determining the value of the stock.

Mr. Holt: General Lilly has withdrawn his question and is going to put another.

The Master: We are now ready for another chain lightning expedition.

By Mr. Lilly:

Q. Now, as to the lower end of the canal or the dock part, did you have any maps or blue prints showing the location of it?

A. I had two; one was the Sheet A and one was Sheet B, of the same scale as the other map; they show basins, locks and wharves of the old original basin and also of the dock proper.

Q. Just tell hurriedly where it was located.

The Master: Are you going to have a blue print of that?

Mr. Lilly: No, he had a blue print and he went on foot and examined this.

The Master: A general description of that is all you need.

Mr. Lilly: Yes, sir.

The Witness: I have a blue print at the hotel.

By The Master:

Q. Just describe it in your own way.

A. From about 7th Street, which is south of the Capitol, to the eastward to about 28th Street.

By Mr. Lilly:

Q. In Richmond?

A. In Richmond, Virginia.

Q. How long was that property and about how wide?

A. Well, I should judge that it was not more than a mile and a quarter long, and it varied in width at the different points, in some places a hundred feet wide or more, perhaps 200 feet wide in the widest place, and other places 50 or 75 feet wide.

By The Master:

Q. You say beginning at 7th Street?

A. Yes, sir.

Q. What is that, above tidewater?

A. Seventh Street is right down here at Byrd Street station.

Q. How far is it above tidewater?

A. I think about 50 feet in elevation.

Q. I mean up the river?

A. About a mile and a quarter, perhaps.

Q. Above tidewater?

A. Yes, sir.

Q. And then did it run down to tidewater?

A. It did.

Q. So that it was located practically in the heart of the city?

A. Yes, sir, the business section, I should say.

The Master: That is all I want.

By Mr. Lilly:

Q. And you spoke about water power. What was the height of the fall, the entire fall?

A. The fall available varied from 18 or 20 feet, and in some instances it was mentioned as being about 50 feet, or the possibility of obtaining about 50 feet.

By The Master:

Q. Were they utilized?

A. Yes, sir.

Q. All of them?

A. Well, I do not believe all of the water power was utilized. There was some additional power that was not utilized. There were certain old contracts made, your Honor, going back to seventeen hundred and something, and some subsequent to that date, and some before the war and some after the war.

Q. How are those water powers to-day, for instance?

A. I understand they are now in use by the Tredegar Mills and some others.

Q. Is that water power right adjacent to Richmond?

A. Yes, sir.

Q. The main fall was right in the City of Richmond?

A. Yes, sir, that is the main fall was rather an extension of falls or rapids, and they utilized the full head by means of this canal.

Q. How many horsepower did they develop?

A. I cannot give you that, your Honor.

Q. You have not got factors enough so that you could give that?

A. No, sir, I did not have the necessary data.

The Master: That is all that I wanted to inquire about.

By Mr. Lilly:

Q. Do you know what the docks earned for the year 1861, or about that date, the gross earning and the net earning?

The Master: Were they segregated from the canal generally?

Mr. Lilly: Yes, sir.

The Master: A separate proposition?

Mr. Lilly: They are all owned together, but the revenue is kept separate.

A. May I refer to my notes?

Mr. Anderson: There was a lower and an upper dock.

The Witness: They acquired the lower dock and added to it, the total cost being something over $800,000. If you will let me refer to my notes, your Honor, I can give some further information on that.

The Master: We are getting something now that has some relation to the item of $1,000,000?

Mr. Lilly: Yes.

The Witness: In Document No. 17, page 117, being the report for the fiscal year ending September 30th, 1855, made by the James River and Kanawha Canal Company, I find the following under the head of unfinished improvements: "Disbursed on construction from Buchanan to Covington, $164,605." That was on locks, as I understood, beyond the part that was then finished, and to the extreme west. Then, on page 118 of the same report is shown, under the heading "Tidewater connection, excess of disbursements over receipts, on account of improvements and operation, $497,436." On page 123 of the same report, under the head of new improvements and subject heading disbursements is shown the following:

Purchase of Richmond dock	$244,721.
Tidewater connection prior to loan of 9th March, 1849,	9,233.
Tidewater connections	582,945.

Making a total as of date September 30th, 1855, $836,899

For the year ending September 30th, 1860, in Document 17, page 275, under the heading new improvement, subject heading disbursements, appear the following:

Purchase and improvement of Richmond dock	$244,721.
Tidewater connections prior to loan of 9th March, 1849	9,233.
Tidewater connections	598,199.
Total as of September 30th, 1860	$852,153.

In the same volume, on page 237, is found the following, under the heading of "Receipts from revenue:"

Dock	$50,128.03
Canal	238,991.27

Q. What date was that that the earning of the canal was $238,000?

A. That was on the same date, as of September 30th, 1860.

Q. Give what the expense was?

A. Under the heading Disbursements, Docks, $7,721.52.

Tidewater connection	$842.07.
Canal	$138,099.03.

Q. As I understand, those figures refer to the income and disbursements on the dock and canal as of September 30th, 1860?

A. Yes, sir.

Mr. Holt: Ending with what year?

The Witness: That was the end of the fiscal year.

The Master: What is the aggregate of the disbursements?

The Witness: On the entire canal and docks?

The Master: Yes.

Q. Give the income and then the disbursements.

The Master: Were there any fixed charges outside of those?

Mr. Lilly: I suppose so, your Honor.

The Master: We will see what those were. I think we can get it all in here. If there were fixed charges, we will see what they were and what the next result was.

Mr. Lilly: I think Mr. Hillman is trying to look up the balance sheet.

The Master: You think he will supplement that?

Mr. Lilly: Yes, sir.

The Witness: The total of disbursements, your Honor, in the estimates just mentioned for the fiscal year ending September 30th, 1860, $146,662.62.

Q. Give the total of income from the docks and canal?

The Master: The receipts.

A. The total receipts for the same period of time, received from the docks and canal, $289,119.30.

The Master: Do you know what the interest charges were upon the indebtedness of the canal company for that year?

A. I am not informed.

The Master: We will get that from Mr. Hillman.

Q. How much was the excess of the income over the disbursements for the year ending September 30th, 1860?

A. $142,456.68.

Mr. Lilly: We will now offer the map in evidence.

The map was admitted in evidence and marked Defendant's Exhibit No. 14, September 9th, 1914, C. B.

The Master: We will suspend here until 10 o'clock in the morning.

Adjourned to September 10th, 1914, at 10 A. M.

BEFORE THE MASTER.

Richmond, Virginia, September 10th, 1914.

Present the same counsel as on yesterday.

Mr. Lilly: There was some evidence given yesterday with reference to Mount Jackson on the map that was filed, and Mr. Anderson has had that put on some of the other maps; and we ask to substitute that.

The Master: These were not put in yesterday.

J. K. ANDERSON,

recalled for further examination, testified as follows:

The Witness: Leesburg was put on, it being another terminus of the operating road.

The Master: I was going to make this inquiry about this blueprint. Of course if that is a part of the record I will have to get it in in some place in the record. Would it be feasible to reduce this by a photographic process, say fifty per cent., and make it reasonably equally effective? There are a lot of these names on here that could be reduced fifty per cent. and be read all right. If we could reduce this fifty per cent. it would make a blueprint that would go very conveniently into the record, but as it is now it is pretty large to go in.

Mr. Lilly: We could use this for the original record now, but when it is put in print it could be reduced.

The Master: Mr. Anderson can attend to that. That will make it a pretty convenient exhibit to go right along in the print. Was this map put in?

Mr. Lilly: Yes, your honor, marked Exhibit No. 14.

By Mr. Lilly:

Q. Mr. Anderson, how much railroad was in operation and completed in the State of West Virginia as of January 1st, 1861?

The Master: West Virginia?

Mr. Lilly: Yes, the number of miles.

The Master: You mean now of these systems involved in the controversy?

Mr. Lilly: Yes, sir.

The Master: So that it is confined to that?

Mr. Lilly: Yes, I mean to confine it to the railroads in which Virginia was interested as a stockholder.

The Master: And as to which claims are made in this answer?

Mr. Lilly: Yes, sir.

The Master: So that confines it to the record itself. I suppose that is what you meant?

Mr. Lilly: Yes, that is what I meant.

Mr. Harrison: All that is in the record now.

The Master: It won't take but a minute, if they want it.

A. There was approximately in that part of old Virginia which now constitutes West Virginia about 18 miles of operated road, being a part of the Winchester & Potomac Railroad.

By the Master:

Q. That was in 1861 and 1863?

A. In 1861, January 1, 1861, your honor.

The Master: And does that also apply to June 20th, 1863?

Mr. Lilly: I do not know whether he has investigated with reference to that.

The Witness: No, sir, I have not.

By Mr. Lilly:

Q. What was the total mileage of railroad in what is now Virginia as of January 1, 1861, in which Virginia was a stockholder and to which claims are set up in the defendant's supplemental answer?

The Master: To which this controversy relates; that covers the whole ground.

A. 1,199.99, I might say 1,200 miles.

Q. Did you bring with you the blue prints showing the dock's properties?

A. I did not; they are at the hotel.

Mr. Lilly: That is all at present.

The Master: You may cross-examine.

Mr. Anderson, of counsel for Virginia: If your honor please, I mention this for information, my instructions from the master—I would like to have Dr. Hogg's attention—I thought your honor had ruled out the evidence of Mr. Anderson yesterday.

The Master: I ruled out his opinion as to the cost and value.

Mr. Anderson: And as to his inspection?

The Master: There is nothing in on that. I did not rule out what he stated about the tow path and the road, those things that he could see; anybody could see that. His testimony is competent upon that point. I did rule out everything that he was expected to testify to on the question of cost of excavation or value of existing tow paths to be utilized by the road and covering that general question. As to the physical conditions, there was no objection made to his testimony. The only objection that was made to his testimony was when you got down to the point where he was asked to put into the record his opinion as to the question of excavation. Then an objection was made and I sustained the objection. No objection was made to any of the balance of his testimony and I did not have any occasion to rule it out.

Mr. Holt: All that portion of his testimony as to which your statement about the airship had application went out.

The Master: Yes, the horseback observation. We know that Mr. Anderson made it, but it is not in as a factor. Nothing else was objected to.

Mr. Anderson: We do not care to cross-examine him. We have evidence that takes his evidence out of the case.

Mr. Harrison: I want to ask him one question.

CROSS EXAMINATION.

By Mr. Harrison:

Q. I want to know the length of the Orange & Alexandria railroad.

A. The distance from Alexandria to Gordonsville was 88.3 miles. Then there is a piece over the Virginia Central from Gordonsville to Charlottesville, and then they had an additional length of line from Charlottesville to Lynchburg of 60 miles, and then a branch line from Warrenton Junction to Warrenton, making a total of 157.2 miles of main line and branches.

Mr. Harrison: That is all I want to ask.

Mr. Holt: I wanted to understand from Mr. Anderson what he said, if anything, upon the subject of the state of completion of this canal of January 1st, 1861.

Mr. Harrison: He did not say anything.

Mr. Holt: I will ask you the question and run the risk of repetition.

By Mr. Holt:

Q. Was the James River and Kanawha Canal completed and in operation on January 1st, 1861?

A. My only source of information regarding that was this map of 1859, which so showed it as being completed or finished, to use their own term, from Richmond to Buchanan and also from Lexington down the north fork of the James River to Balcony Falls.

Q. From Balcony Falls to Buchanan, is there any hiatus there?

A. No. I mentioned from Richmond, which passes Balcony Falls to Buchanan.

Q. Was that canal complete and in operation on January 1st, 1861, then?

Mr. Anderson: It undoubtedly was, to near Lexington, not quite to it.

The Witness: I said a few miles below Lexington.

Mr. Anderson: I would not say it was completed, it was in operation.

The Master: The towpath was about a mile short of Lexington.

Mr. Holt: If Mr. Hillman will now take the stand we will give the Master the requisite information on the Richmond, Fredericksburg & Potomac road. But while he is coming, yes-

terday when we introduced this interest account, interest collected on securities from 1861, we had nothing but the white sheet or matrix, and although it was filed as an exhibit, we have now the blueprints to distribute. Have they been handed to you gentlemen already?

Mr. Harrison: I reckon so, Judge; I really do not know.

The Master: Do you want the original blueprint to go on file as the official exhibit?

Mr. Holt: We really marked it that way yesterday.

The Master: Have you anything else that you can do while Mr. Hillman is coming?

Mr. Holt: I believe not. We have one other accountant that we want to get a short schedule from.

The Master: My attention was called to the fact this morning that there is some question as to how the original schedule found on page 13 of the print in the case will be treated in connection with the corrected schedule. Of course that schedule has been very extensively and profoundly modified by the corrections subsequently made. I understand West Virginia would prefer to have the schedule 13 go out and the corrected schedule take its place, and Virginia prefers to have it stay in and the corrected schedule go in also.

Mr. Harrison: Undoubtedly.

The Master: Of course unless there is an agreement between the parties that would have to be the course pursued, because that was the course developed upon the hearing.

Mr. Holt: We make no question about that; let them both go in.

Mr. Harrison: Put in the original schedule and the revised schedule.

The Master: I suppose they want the benefit of whatever change they have compelled the witness to make during the course of the hearing.

Mr. Lilly: If it explains the change, let it go in.

The Master: Exhibit No. 11, page 66, has also been changed. And I suppose the Virginia people prefer to have the changed schedule in addition to the original schedule. If not we will change it.

Mr. Harrison: Yes, we want it just as before, let the original stand and put in the corrected schedule.

The Master: Let the original stand as it is and let the corrected schedule go in, so that the record will show the original schedule and the corrections made during the hearing.

CONWAY W. HILLMAN,

recalled for further examination, testified as follows:

By Mr. Holt:

Q. Mr. Hillman, upon yesterday or the day before the master requested you to give him and put into the record any additional information that you might find with respect to the Richmond, Fredericksburg & Potomac Railway Company, throwing light upon the character of its balance sheet as put in by you.

The Master: And principally the large item called cost of construction, so that we could get an intelligent idea of what that really represented.

Q. Have you made an additional search and if so, have you found anything throwing any light upon that subject?

A. Yes, sir, I have.

Q. What is that?

The Master: Does this include all that there is, and has he accompanied it with all the explanation that will be useful? Because if he has you submit it to the other side and put it right into the record and I will take it for what it is worth later on. If the memorandum which you hold in your hand, Judge Holt, contains everything that Mr. Hillman has found and if it contains all the explanations that occur to him as being essential and the same thing that he would make orally, put it into the record and hand it to the other side, and as far as I am concerned, I will look it over later and the other side can have an opportunity to cross-examine in relation to it.

Q. Have you prepared, Mr. Hillman, a written statement showing the result by items of your new search?

A. Yes, sir, I have.

Q. Will you file it as a part of your testimony and mark it

Defendant's Exhibit No. 15?

Mr. Harrison: What does that exhibit purport to be?

Mr. Holt: I will hand you a copy of it right now.

A. I file it so marked.

The Master: This is the data which he has found bearing upon the weight to be given to the balance sheet of the Richmond, Fredericksburg & Potomac Railroad?

Mr. Holt: Yes.

The paper was admitted in evidence and marked Defendant's Exhibit No. 15, September 10th, 1914, C. B., and is as follows:

In matter of the Potomac Steamboat Company stock included in the assets of the Richmond, Fredericksburg & Potomac railroad, March 1, 1861, $38,900.00.

Page 350, R. F. & P. report of 1853, referring to the Washington & Fredericksburg Steamship Company, (the original company of the Potomac Company) says: "In consequence of the low price paid for the Steamboat Company stock, the R. R. Company have since received 12 to 14% annual dividends," but states that this year (1853) the Steamboat Company lost money because they had to make connection with two trains per day. This loss was made the basis of a more liberal allowance by the R. F. & P. to the Steamboat Company in the division of rates, and then the Steamboat Company seems to have just paid its expenses.

Page 502, March 31, 1861 report, shows that the four boats of this company were seized by the U. S. Government for transports and war vessels. On the same report a dividend is shown on this stock, and carried in surplus, of $33,360.00.

In April, 1862, page 507, they had credited this account $83,385.00, which increase of $50,025.00 was explained in the report of November, 1864 (written and not paged), when it was stated that Capt. J. M. Robinson had turned over to the State the $50,025.00, their share of the amount paid by the U. S. Government for the four boats. This establishes that January 1, 1861, this asset was at least worth par.

In the Matter of Bills Receivable:

This account varies from year to year, sometimes greater and sometimes less than the amount March 31, 1861. There is also shown in the disbursements from year to year purchases of bills receivable, hence it is inferrable that the account was good and collectible.

In the Matter of Value of Cost of Road and Equipment:

The cost is carried forward carefully year to year, generally under classified headings, such as "Engineering," "Grading," "Bridges," &c., and contains no items that are not legitimate.

They had a yearly report by directors as to general conditions of road, and in almost every instance they report on roadway and rolling stock, and the report is always in excellent condition, showing that the repairs and renewals had taken care to keep the road in good condition.

In addition to this, we have the following items of "extraordinary" expense charged to operating expenses, which extra expenses were additional items of cost of road and equipment.

Page 295, R. F. & P. report, September 30, 1848, shows expenditure from earnings in capital accounts not charged to cost of road and equipment	$ 11,266.46
Page 10, R. F. & P. report, 1849, shows extraordinary expenses	27,875.92
Page 362, 1852 report, says that the revenue has been sufficient not only to pay current expenses and the usual dividend, but to lay down heavier rail and carry 9 to 10,000 to surplus, no specific amount mentioned, but not charged to cost of road and equipment	
Page 346, 1853 report, says that the " expenses included cost of two locomotives, two additional coaches, and new depot and passenger office at Fredericksburg," not charged to cost of road.	

Page 379, May, 1854, shows paid out of earnings for one new engine, four coaches and improvements to road and structures (in detail on report)	20,986.55
No charge to cost of road for these.	
Page 420, September 30, 1855, shows extraordinary expenses of	17,470.00
Consisting of rolling stock $13,970.00	
Improvements to way and structures 3,500.00	
Page 452, same book of reports, shows extraordinary expenses	20,700.00
being rolling stock 16,200.00	
Improvements 4,500.00	
Not charged to cost of road	$ 98,298.93
Amount brought forward	98,298.93
Page 468, March 31, 1858, shows $17,810.00 extraordinary expenses, of which rolling stock is $7,810.00, and $6,000.00 may be classed as renewals, and balance seems doubtful we take..	7,810.00
Page 483, March, 1859, shows extraordinary expenses, all rolling stock, not added to cost of road and equipment	11,085.00
Page 496, March, 1860, shows extraordinary expenses $17,096.58, of which $7,846.58 may be considered renewals $9,250.00, (viz.: taking care of depreciation) and balance is new rolling stock not charged to cost of road.....	9,250.00
Page 508 of report of March 31, 1861, shows $24,549.45 extraordinary expenses, of which only $6,400.00 is entitled to consideration as a capital expenditure	6,400.00
Total improvements determinable	$132,843.93

The Master: So far as I am concerned, I will take this and look it over during the intermission or this evening. By the way, do you want to excuse Mr. Hillman or do you intend to keep him here for a day or two longer?

Mr. Holt: We think we will keep him here for another day in order to be on the safe side.

The Master: As far as I am concerned, I will look at this memorandum this evening. I may not have time during the recess at noon; and the other side can also have an opportunity to examine it, and if they want to cross-examine in relation to it, they can call Mr. Hillman later, or would you prefer to take it up right now, Mr. Harrison?

Mr. Harrison: No, sir, I am not prepared to cross-examine on it now.

The Master: You would not be any better prepared if he simply read it orally?

Mr. Harrison: No, sir. It will take a little time to look it over.

The Master: I think then if it is agreeable I will take that course with it and we will put it in the record, and later if you wish to ask any questions about it or I wish to ask any questions about it, we will call Mr. Hillman. That saves a little time.

Mr. Harrison: If this purports to be transcripts of the reports of the road taken from the books of the company or whatever it came from, it just seems to be excerpts with comments by this witness upon these excerpts, deductions, conclusions.

The Master: That is right.

Mr. Harrison: If they are worth anything we ought to see the data itself from which they are drawn.

The Master: Why don't you turn this memorandum over to Mr. Potter and let Mr. Potter examine it, unless you prefer to examine the original data yourself? That is, I do not like to take the time to have it brought in here. Just turn this right over to Mr. Potter, or if you want and you prefer to examine the original data, simply put the original data where they can reach it, and later if they have anything that they want to cross-

examine about, we will take it up.

Mr. Anderson: This is a question of what the reports mean.

The Master: This is in response to my question. They do not offer it as evidence. What I wanted him to do was to look at the records and books of this company and see if he could give me any information that would be worth anything tending to show what weight was to be given to this entry as bearing upon its representing the actual value of the road at that date, and Mr. Hillman has done the best he could and has got everything he could find.

Mr. Hogg: And states that he would state that orally if he was examined.

The Master: Yes; but there is no occasion to take the time to do that. I suggest you turn it over to Mr. Potter and let him look at these original sources, and if there is anything later you want to cross-examine about, Mr. Hillman may be cross-examined.

Mr. Anderson: Just from glancing at the paper, I do not think it would be legal evidence if he stated it in detail.

The Master: It is not offered as legal evidence. He has brought it here at my request.

Mr. Anderson: It is inferences of the witness from facts that do not appear here.

Mr. Harrison: The point I make is that he has not brought enough here. If the reports that he has examined in the offices of the company and upon which his original testimony was based show more than the exhibits which he filed from those books originally, and he now wants to base some conclusion or conjecture or theory founded upon something else than those reports show, he ought to have brought us a complete transcript. It is not for us to go and hunt them up.

The Master: No. I think you misunderstand the situation, Mr. Harrison. Mr. Hillman brings here these trial balances and he states what they are, and I examined him on the trial balances, and when I got to examine on the trial balances I found this item that is carried along three or four years, at exactly the same sum, and my examination was directed to the question as to whether or not on a liquidation of this company

that sum could properly be realized from the assets, and in connection with that I asked Mr. Hillman to look over for me the books of this company and its reports and anything that he could find that would tend to show to me anything that in his judgment would help me in determining whether that was the total cost of the road after a period of some thirty years, and if that is all there was to it, the weight that I would give to it, and it is in response to that suggestion and request of mine that Mr. Hillman brings this data. Mr. Hillman did not produce it and the other side did not produce it. He has brought it here at my request because I wanted to see if the books showed anything that would give me any light on the proposition as to whether that big item was simply aggregate cost without any cost for depreciation and simply showed whatever they paid out during thirty years, so that I could tell whether or not in my judgment the road that during a period of thirty years had cost say a sum of money would now sell for that same sum. It is in response to that that he has done this work. Of course if it does not appear to you that he has gone into it thoroughly enough, have Mr. Potter do it and bring in anything that will tend to give me any light at all on this proposition.

Mr. Harrison: I do. My point is that it does not shed any light on the subject.

The Master: Then if it does not, it does not amount to anything.

Mr. Harrison: You have just stated that you had requested him to furnish you additional information bearing on this balance sheet that would show what was included in cost of construction, etc., or whether something else included cost of construction. Take this statement he has made, let me read it—

The Master: Can't we save time in this way. Suppose you look it over and I will look it over, and if it does not throw any light on the subject it won't amount to anything.

Mr. Harrison: I think it would be an absolute waste of time to cross-examine about this thing.

The Master: I have not read it. Of course if you want to pursue that course I will have him examined in detail about it, and you can go on with the cross-examination now. But

my suggestion is that we let him put this statement in here—I suppose he has done the best he could—

Mr. Harrison: No, I do not think he has. I think he should have brought us the reports from which these extracts are made.

The Master: Then have the reports examined.

Mr. Harrison: I do not think it is up to us to examine them. It seems to me that if he has found something in the reports that he says is favorable to his construction, that it would be proper for him to bring the whole report here and not merely his excerpts.

The Master: Where is the report?

The Witness: The report, sir, is in room 1401, First National Bank building, treasurer's office of the Richmond, Fredericksburg & Potomac road.

The Master: Where is that, in Richmond?

The Witness: Yes. They will not allow them to go out of their possession.

The Master: They will open them to inspection of Mr. Potter?

The Witness: Yes, undoubtedly.

Mr. Harrison: I do not think the duty ought to be imposed upon us to send somebody there to go over those reports and see what else they contain, but my point is if there is anything contained in those reports that would help to elucidate the balance sheet of this road, the reports themselves ought to have been brought and not ex-parte extracts from them.

The Master: He was not requested by me to bring the reports, and he is not subject to criticism for not bringing them.

Mr. Harrison: Can it not be done now?

The Master: If they do not want to let those reports go out of their possession, it cannot be done.

Mr. Harrison: He can make copies.

The Master: I do not think that is required. I think Mr. Potter or you should go there and check them up.

Mr. Harrison: There is nothing to check up.

The Master: Of course if you do not care to do it you need not do it. There cannot be any confusion about this. Mr. Hillman has done just exactly what I asked him to do. He

has found these things, I do not know whether any of them gives me any light at all, I have not stopped to read them, and I assume that Mr. Hillman has dug up everything that he thinks in any way could have anything to do with what I asked him about. Did you?

The Witness: Yes.

The Master: They won't allow the books to come here I suppose, and the only thing you can do, Mr. Harrison, is to go and look at them, and if there is anything that you want in that is not in, why, have it in. It is just as if I had sent some independent accountant there to ascertain these facts. I do not think that the schedule or the trial balance put in here, from my point of view, was a sufficiently exhaustive investigation. Neither side undertook to go any further. Now, I have gone further on my own motion. Inasmuch as he was the only witness who had been here, he undertook to get this for my information. If they would allow these books to come here they could be brought.

By the Master:

Q. Did you make any application to bring them here?

A. Yes, sir, they will not be allowed to leave the secretary's office unless they are brought here by legal process.

The Master: I do not suppose you would want to subpoena them?

Mr. Harrison: No, sir.

The Master: Your suggestion may be absolutely well founded, that they may not be anything here that will be of any use to me; I have not read a word of it yet. I suggest that we put this on the record, and I will read it and you read it, and if you think there is anything in it that needs examination or that ought to be checked up, of course I would like to have you people check it up. If there is not, it simply goes for nothing. The situation here is that Mr. Hillman has done the best he could to follow my instructions, as I understand it. Is not that it?

The Witness: That is right, yes, sir.

The Master: Now, whether I have got anything by making

that effort, of course I do not know. I think we will let this go on and say that the cross-examination as to the memorandum furnished by Mr. Hillman is for the time being suspended, until, if the parties desire, an opportunity may be given to investigate the original sources, and until I may make any examination I want to make. And after you look it over carefully, if you are satisfied it does not shed any light, you may say nothing further about it. Do I make myself clear, Mr. Harrison?

Mr. Harrison: Yes, sir.

The Master: Didn't I make an inquiry at one time about the large items in the James River and Kanawha Canal Company matter involving franchise?

Mr. Hogg: Yes, sir.

The Master: And dock facilities? Have you prepared anything on that?

Mr. Holt: We have nothing, your honor, except what Mr. Anderson said yesterday about the docks.

The Master: That is, there is nothing else that can be developed.

Mr. Holt: It seems that those books are practically destroyed. Some of them are in existence, but it is just a piecemeal business, as I am informed. Do you gentlemen expect to put into the record the market quotations on James River and Kanawha stock?

Mr. Harrison: I think so. I think that is included in our list. We have some market quotations on that.

Mr. Holt: There was one other matter here—

The Master: Before we leave this, Judge, let me see if I fully understand it. Where is the James River and Kanawha exhibit, what page?

Mr. Holt: Mr. Hillman, if you have it, give it to the master.

Mr. Lilly: It is next to the last, about page 60, as well as I remember it.

Mr. Hogg: Have those schedules been printed yet?

The Master: Yes.

Mr. Lilly: I find it is page 38, your honor.

The Master: What I wanted was this, and if further investigation develops that nothing can be ascertained on that

line I will have that appear right now. Here is this item of franchises and right of way, $5,588,609.76. I wanted the information, if it was in existence, that would show to me how much of that item was allocated to right of way and how much of it was called franchise. And then in addition to that I wanted the information, if it was obtainable, that would tell me whether that franchise represented an actual expenditure by Virginia or by the Canal Company, or whether it was simply an item of franchise that they were undertaking to value as being something they had received from the State, consisting of the right to construct and build this canal, and they were using it as a basis for capitalization, and with reference to which no actual expenditure had been made. Now, if there is anything in existence that will give me any light on that I would like to have it. But if investigations have been made since I made the inquiry, and the developments are negative, why that simply leaves it just as I find it. You all appreciate the significance of the inquiry, but that is what I want to know. It really comes down to this, whether they were capitalizing the franchises at an arbitrary price put on it by themselves, or whether they were capitalizing it on the actual cash that had been paid out by somebody at some time.

Mr. Anderson: As I understand, the franchise was an intangible right.

The Master: There is nothing to show me that.

Mr. Anderson: The charter is in.

The Master: Even the charter does not show me. Of course I know that this Canal Company cannot exist and operate this canal without a franchise from the State. I suppose under this franchise they have a right to exercise eminent domain. In the first place they have the franchise of being a corporation, and in the second place they have a public franchise which they exercise in the construction of this public utility, which involves the responsibility of a common carrier, and invests them with the right of eminent domain. What I want to find out is when they put in this balance sheet, whether it is simply their valuation of that public franchise, for which they have not paid a copper, possibly, unless they paid something to the

state, and that therefore it is an arbitrary sum, or whether that represents the actual expenditure of cash.

Mr. Anderson: I do not think they ever expended a dollar of money. We cannot prove that.

The Master: Of course if the books of the company are accessible, there is not any question but that the proper accountant can demonstrate to me what the fact is in regard to that item. Well, now, if they are not in existence, and if there is no evidence accessible we will simply have to take it as it stands. As it stands it does not show anything one way or the other.

Mr. Anderson: I do not know what the books of the company would show about it at all.

The Master: Of course I make myself clear to counsel on both sides on that item?

Mr. Anderson: Virginia never charged anything for the charter except the charter fee.

The Master: Of course it may be that this whole sum of money was paid out for right of way, and that they simply put in franchises as a description of that phase of their assets. Of course I cannot tell. The point with me is that if there is anything in existence that will render this factor certain I would like to have it.

Mr. Holt: So far as I am able to discover, your honor, there is nothing extant that would throw any light on your inquiry outside of the deed itself. The deed goes into very considerable detail, and you may find it helpful.

The Master: Very well.

Mr. Holt: But beyond that I do not belive there is anything.

The Master: Then that exhausts the whole inquiry. Of course that is simply one of the unfortunate conditions we are up against on account of the expiration of this long period of time. I want the record to show right here that every effort has been made to make that factor certain, and the only thing that either side can get is what may be contained in this deed.

Mr. Lilly: There is something here that might throw some light on it.

The Master: Suppose you look that up, Mr. Attorney-General, during the noon recess.

Mr. Lilly: All right, your honor.

The Master: Have you any other witness?

Mr. Holt: We may straighten it out without calling him. Some question was made the other day about the fact that one of Mr. Hillman's schedules was based upon an examination made by an assistant, of records at Washington and not upon the personal examination made by himself. We have Mr. Bray here this morning who made that examination, and I presume we would be permitted to conclude that his examination was accurate and correct unless the gentlemen want to examine him upon the subject.

The Master: Then the record shows that West Virginia has offered Mr. Bray as a witness for the purpose of establishing the verity of the computations that were made by him and subsequently adopted by Mr. Hillman; and that unless desired by the counsel on the other side they wont' take up the time to formally establish those facts. But they are ready to produce him and subject him to cross-examination.

Mr. Harrison: I understand that Mr. Bray would testify that these were true copies?

Mr. Holt: Yes.

Mr. Anderson: Of what is shown by the books referred to.

The Master: Judge Holt stating that it was his work that was used by Mr. Hillman, and that it was accurately and correctly done. Do you want to cross-examine him?

Mr. Harrison: We say if the witness will testify, as we understand that he will do, that he investigated the reports in Washington and that the copies that he made are true transcripts of the copies that he examined, that may go.

The Master: Relying on the accuracy of Judge Holt's statements with reference to this witness, the counsel for Virginia do not require him to be produced and examined.

Mr. Holt: I have the man coming right here.

Mr. Harrison: No necessity for that.

The Master: It developed in the course of the hearing that some of the original investigation as to another schedule or schedules was made by Mr. Leitch, an assistant of Mr. Hillman, and that Mr. Hillman has utilized the information thus collected by Mr. Leitch. Mr. Holt states that Mr. Leitch accurately transcribed the work that he did, and from which Mr. Hillman testified, and they are ready to produce him this morning as a witness in chief for that purpose and subject him to cross-examination, unless it is satisfactory to Virginia to concede that he would so testify. I state it right, do I?

Mr. Holt: Yes, that is right, except that I want to be absolutely truthful about it. I really have not discussed that with Mr. Leitch. He is right here, and it may be that under the circumstances we had better ask him.

Mr. Harrison: It is a mere question of accuracy of his reports.

The Master: I believe they are correct.

Mr. Harrison: It is simply as to the accuracy of the transcripts of the reports he has made in Washington.

The Master: Under these circumstances, counsel for Virginia do not consider it necessary to require the production of Mr. Leitch, and concede that the information thus acted upon by Mr. Hillman was accurate.

Mr. Harrison: Was accurate in the sense that it was a correct transcript of what he found in Washington.

Mr. Hogg: What he found in the treasurer's office of the Richmond, Fredericksburg & Potomac railroad at Richmond.

The Master: Accurately transcribed from the books of the company in the treasurer's office at Richmond.

Mr. Holt: I have just asked the Washington man, and he says they are all O. K.

The Master: I want to call attention to the fact that I have taken the precaution to write to the Supreme Court of the United States for the purpose of ascertaining what the facts were in relation to existing duplicate copies of the original record, and I get this letter from the clerk and I read it here so that we can all have the information and govern ourselves accordingly: "Replying to your letter of the 8th instant in

reference to the case of *Virginia* v. *West Virginia*, No. 2, Original, October term, 1914, I beg to say that I think there will be no difficulty in supplying the court with the record heretofore made in this case." I intimated that I thought there might be trouble. It turns out that there will not be. I thought that this ought to be stated so that you will be able to make some arrangement in connection with the details on that hypothesis. I thought I had better get the information right from the original source, and then we would know what we are talking about.

Mr. Holt: We desire to read into the record at this point and in connection with an Act of the General Assembly of Virginia, approved February 20th, 1892, Acts of the General Assembly of 1891-92, page 533, the report of the commission appointed at the session 1889-90 to receive proposals for settling the existing unsettled obligations of the State, submitted January 14, 1892, and extending from page 17 to page 36 inclusive, of a pamphlet entitled "Special Message of the Governor of Virginia transmitting report of the commission appointed on the public debt, Richmond, 1892."

(The act of February 20, 1892, has already been printed in this record, beginning on page 695.)

GOVERNOR P. W. M'KINNEY'S SPECIAL MESSAGE.

At a session of the General Assembly of Virginia held in 1892 in the city of Richmond, Governor P. W. McKinney sent the following special message to the said Assembly in reference to the Virginia debt, which said message is reprinted in the Journal of the House of Delegates of Virginia, session 1892.

"In my regular message I made no mention of the settlement of the public debt agreed upon by your commission with the committee representing the bondholders on the 19th of November, 1891. At the time the Legislature assembled, the bondholders had not held their meeting to consider the settlement which had been made with the Virginia commission, and what their action would be was a matter of conjecture. The newspapers asserted that there was serious opposition to the settlement, and that some of the bondholders would endeavor to withdraw their bonds from the possession of the committee and oppose the proposed ratification; and it was reported also, as showing their hostility, that remarks were made by some of the bondholders, more harsh than polite, against the State of Virginia, when the head and front of her offending was that her

commission had accepted the proposition of settlement, made by agents of their own selection, not a member of whom was chosen by any suggestion of hers, and were strangers to her and her people. I, therefore, thought it best to reserve for the time being what I had to say on the subject, as well as the report of your commission, until something more definite was received. On the 7th day of January, 1892, I was officially informed that the plan of settlement agreed upon on the 19th of November, 1891, had been approved by the advisory board for the creditors, by the London advisers, and by the bondholders, and I now make haste to submit for your consideration this special message, with the accompanying documents, which contain all the correspondence and the various propositions for settlement, resulting, finally, in the agreement herewith submitted for your ratification.

THE PUBLIC DEBT.

Since Virginia resumed her position in the Union there has been no question of such grave importance to her people as the just and honorable settlement of her public debt. She has never been forgetful of her former credit, and it has always been the desire of a majority of her citizens to settle upon a fair and honorable basis, all just liabilities held against her, and liquidate the same as speedily as possible, having a proper regard to the ability of her people to pay such reasonable taxes as are necessary for the purpose.

As evidence of these facts, we give a brief summary of her legislation on the subject.

THE FUNDING BILL.

On the 30th of March, 1871, the first session of the General Assembly, after reconstruction, an act was passed to provide for funding and paying the public debt. This unfortunate and remarkable bill was rushed through the Legislature without that consideration which its peculiar provisions and its great importance demanded. It was the origin and the cause of all our subsequent unfortunate legislation on the subject of the public debt. It assumed on the part of the State the payment of $31,393,910.96 of principal, which required annually, the sum of $1,865,450.90 for interest—an amount of principal and a rate of interest which her resources were inadequate to meet, without imposing such enormous taxation that the people in their impoverished condition were unable to bear. It was unjust and inequitable, because it assumed the payment of the whole debt, with accumulated interest during the war, and the years of reconstruction, compounded, less one-third for West Virginia's portion, "she having agreed at the organization of her State government to assume and pay an equitable proportion of the debt of the Commonwealth of Virginia." This settlement did not receive the approval of the people.

THE McCULLOCH BILL.

On the 28th of March, 1879, another act was passed, popularly known as the McCulloch bill, its professed object being to provide a new plan for the settlement of the public debt, by which "the credit of the State might be restored, and the aggregate amount of interest payable reduced within limits which would not be too burdensome to the population." New bonds were proposed, payable in forty years, bearing interest at the rate of three per cent for ten years, four per cent for twenty years, and five per cent for ten years, until the principal was redeemed. The coupons attached to said bonds "were to be receivable for all taxes, debts and demands due the State, and this was to be expressed on their face."

This new proposition was not more favorable to the State than that of 1871, save in the rate of interest. The new bond had the objectionable tax-receivable coupon feature. Under this bill the average annual amount of interest to be paid was $1,249,083.45. Like the other funding bill, it was not approved by the people. It soon became evident that so large a portion of the taxes would be paid in coupons, and not in money; that the government could not be maintained unless there was such an increase in the rate of taxation that the people could not pay it. Several efforts were made to induce the bondholders to retire their tax-receivable coupons and consent to a settlement which would bring the annual amount of interest within the resources of the State, all of which proved abortive.

THE RIDDLEBERGER BILL.

Still desirous of satisfying the creditors, if it could be done without imposing an insufferable burden upon the taxpayers, on the 14th of February, 1882, the Legislature passed what is known as the Riddleberger bill. It restated the public debt, eliminating such items as had been improperly admitted, thereby largely decreasing the principal claimed to be due, and new bonds were ordered to be issued, payable in fifty years, at three per cent interest for the amount of our indebtedness, thus equitably ascertained with non-tax paying coupons attached. This act was approved by the people, but not by the bondholders, after its merits had been elaborately discussed. Those who held the tax-paying coupons of the issues of 1871 and 1879, finding that there would not be sufficient revenue to support the government and pay the interest on the debt, made strenuous efforts to force coupons into the treasury of the State in payment of taxes.

THE SITUATION.

Though the Riddleberger bill was passed ten years ago, the debt is still unsettled, and a disagreeable litigation, distressing to the State and unprofitable to the creditors, has been going on, increasing in bitterness and extent each year. It has sorely vexed our people and consumed our revenues; and the State, like a culprit, has been dragged before the courts

of the Commonwealth and the inferior and supreme courts of the United States. She has been subjected to more harsh criticism in the last ten years than in all the past of her history. Her laws have been made the theme of harsh animadversion; her motives impugned; her integrity questioned; her public officers seized and imprisoned for obeying her statutes. Her credit, which had been equal to that of any State in the Union, has been destroyed by a combination of unfortunate circumstances, against which she has contended with a heroic fortitude which has commanded the admiration of the world, and a self-sacrificing devotion to which history has no parallel. Finally, overwhelmed by numbers and resources, her territory dismembered, her towns and cities burned, her homes in ruins, her fields devastated, her sons slain, her property confiscated, her currency worthless, her young men fled from this picture of poverty and desolation and sought employment and homes elsewhere, leaving the State less able to pay the smallest sum ever mentioned as a settlement of her indebtedness than she was to pay the whole debt at the time it was contracted.

In consequence of the harsh action of the creditors, her progress in wealth and population has been impeded; enterprise has been driven away; capital has been afraid to invest—timid always and easily induced to believe that a State that does not pay its own obligations cannot be relied on to enforce the obligations held against her people, and that if she makes laws to protect herself against her creditors she will make them also to protect her people for their creditors. This being the situation, every business has felt its baneful influence, and all the people have suffered for it, and her credit, which today should be as stainless as her honor, has been destroyed by a cruel fate which every loyal son has struggled, but struggled in vain, to avert.

A COMMISSION APPOINTED.

This being her unfortunate situation, on the 5th day of March, 1890, the General Assembly, by a joint resolution, selected a commission, in part from the Senate and in part from the House of Delegates, together with the Lieutenant Governor and the Governor of the State, to receive proposals for funding the debt. The commission was authorized to agree upon the terms of a contract with parties proposing to fund, upon the principles set forth in the act of February 14, 1882, which is the Riddleberger bill, subject to ratification by the General Assembly.

On the 2d of May last I received a letter dated New York, April 28, 1891, and addressed to me in my official capacity, by which I was informed that the bondholders' committee was prepared to submit a proposition for the settlement of the State debt of Virginia, and asking me to name "a very early day," when some of their members might meet us and confer on the subject, etc. After some correspondence, I fixed on Tuesday, the 2d of June, for the proposed meeting, and invited the committee of bondholders, composed of F. P. Olcott, chairman; Hugh R. Garden, William L. Bull, Charles D. Dickey, Jr., Henry Budge and John Gill, to meet the

Virginia commission at my office in Richmond, for the purpose referred to in their letter.

The propositions of the bondholders' committee were carefully considered and declined by your commission on the 3d of June—all of which will appear from the report accompanying this message.

THE SECOND CONFERENCE.

In September I received another communication, dated the 11th of August, from the bondholders' committee, making another proposition for the settlement of the debt. I declined at that time to call the committee together, because it was during the political canvass, and I did not deem it prudent to have a conference until the election was over.

By letter, dated the 28th day of October, 1891, the bondholders' committee again requested that the Virginia commission be convened "at as early a day as practicable," not later than the 15th day of November. In compliance with this request, I convened the commission on the 17th of November, the 15th being Sunday. After many conferences and much discussion, on the 19th of November your commission and the committee of the bondholders agreed upon the terms of settlement, which were unanimously approved by the commisson and the committee, as just and honorable to the creditors and the debtor.

OUR AGREEMENT.

The agreement is as follows: "We will recommend a proposition to issue a maximum amount of $19,000,000 of bonds to be exchanged for the outstanding obligations of the State mentioned in the Riddleberger act (other than those held by schools and colleges) now in the hands of the public, but not including bonds already funded under that act, such new bonds to run for one hundred years, and to bear two per cent interest for ten years, and three per cent interest for ninety years. The bonds and interest obligations shall be of the same general character as those provided by the Riddleberger bill; and it is distinctly understood that the coupons or other interest obligations are not to be receivable for taxes. The proposed new bonds shall be exchangeable for the outstanding obligations aforesaid in the proportion of nineteen of the former for twenty-eight of the latter. This recommendation is, of course, to be made conditional on the understanding that your committee hold and has the authority to exchange the obligations mentioned in your previous communication to us, amounting to at least $23,000,000." Which agreement was signed by the entire commission as follows: P. W. McKinney, R. H. Cardwell, H. T. Wickham, J. Hoge Tyler, Taylor Berry, W. D. Dabney and Robert H. Tyler; and attested by its secretary, P. C. Warwick, and transmitted to the bondholders' committee.

On November 19, 1891, we received a reply from the committee of bondholders, in which they say: "That the proposition submitted by us, as

amended by you, will go to our constituents with our cheerful recommendation," etc.

THE SETTLEMENT EARNESTLY ENDORSED.

It would transcend the limits of this message for me to give in detail the work of your commission, or elaborately discuss the various phases of the public debt, for which I refer you to the report of the commission; but I cannot submit a question of so much importance to you without declaring that I have given it my best consideration, and earnestly commend it to you as the most favorable proposition for the settlement which has been presented to the Legislature for its approval and ratification. I give below a brief statement of each of the propositions for the settlement which have been approved by the Legislature, and you can readily decide upon the comparative merits of the four propositions.

FIRST FUNDING BILL.

Bonds issued under act of March 30, 1871, to run thirty-four years from July 1, 1871, due July 1, 1905, redeemable at the pleasure of the State after ten years. Rate of interest six per cent per annum, tax-receivable coupon.

Total principle on 1st July, 1871 (if all indebtedness had been funded). $31,393,910.96. requiring annual interest in tax-receivable coupons of $1,865,450.90.

SECOND FUNDING BILL.
(McCULLOCH BILL.)

Bonds issued under Act March 28, 1879, to run forty years from January 1, 1879, due January 1, 1819, redeemable after the expiration of ten years from 1st January, 1879. Rate of interest three per cent for ten years, four per cent for twenty years, and five per cent for ten years. Tax-receivable coupons.

Total principal on 1st January, 1879 (if all the indebtedness had been funded), $31,227,083.64, requiring annual interest in tax-receivable coupons, averaging $1,249,083.35.

THIRD FUNDING BILL (RIDDLEBERGER BILL.)

Bonds issued under act February 14, 1882, to run fifty years from July 1, 1882. Due July 1, 1932. Option of payment after July 1, 1900; rate of interest three per cent per annum; no tax-receivable coupons. Total principal on July 1, 1882 (if all indebtedness had been funded except bonds held by colleges), $21,796,304.30. This is the amount which is claimed to be due by a calculation which is in the preamble of the Riddleberger bill, requiring annual interest on tax-receivable coupons, $653,888.83.

FOURTH—THE OLCOTT SETTLEMENT.

By the settlement, unanimously agreed upon by the commission appointed under joint resolution of March 7, 1890, with the Olcott committee of New York, the bonds are to run one hundred years from July 1, 1891. Due July 1, 1991. Interest two per cent for ten years, and three per cent for ninety years; non-tax-receivable coupons. Principal on 1st July, 1891, of new bonds (if all indebtedness be exchanged), $19,000,000. Principal on 1st July, 1891, of three per cent bonds now in the hands of the public and literary fund, $6,081,242.50. Total principal outstanding 1st July, 1891, $25,081,242.50 (exclusive of bonds held by colleges).

The total annual interest due by the State under the settlement with the "Olcott committee," including interest on Riddleberger three per cent bonds held by the literary fund and in the hands of the public on October 1, 1891, $562,437.27—an annual saving of interest for ten years to the State, over a settlement under the Riddleberger bill, of $91,451.56, which aggregates $914,515.60.

The auditor reports as applicable for the payment of interest on the public debt, from the revenues of the State (including taxes on railroad property), about $490,307.29.

The second auditor reports annual dividends on the stock, etc., of the Richmond, Fredericksburg and Potomac Railroad Company, $32,746.

Amount of revenue available for payment of interest on the "public debt," $523,053.29; amount annually required to pay interest on the public debt, $562,437.27; amount to be provided for, about $39,383.98, if all the bonds are exchanged at once, which is scarcely probable.

THE PROPOSED SETTLEMENT.

By an examination of the joint resolution you will observe we were restricted to an agreement based upon the principles of the Riddleberger bill. We do not believe that we have materially transcended our powers. In ascertaining the amount due to the creditors, we have adopted the basis of settlement used in the Riddleberger bill. Ten years having elapsed since its passage, there has been a considerable increase in the debt by way of interest.

We agreed that $19,000,000 should be the maximum amount of new bonds to be issued in exchange for the outstanding obligations of the State, now in the hands of the public, but not including bonds already funded under the act of February 14, 1882. There were on October 1, 1881, $6,081,242.50, of these bonds in the hands of the public and the literary fund, which with the proposed new issue, will make the sum of $25,081,242.50. On this amount we will be compelled to provide annually for the accruing interest. This appears to be an increase in principal over the settlement of 1882. The consideration of how this principal is to be met is postponed for a hundred years. We do not think it worth while to concern ourselves about the financial condition of Virginia a hundred

years from now. We have interposed four generations between us and the payment of this principal. It is sufficient to affirm that unless all of our calculations prove delusive, based as they are on the constant increase of taxable values in the past ten years, the State will be much better able to take care of the principal of the debt than we are to provide for the interest now.

We adopted the form of the Riddleberger bill, as far as it is cable to this contract, with its non-tax-paying coupons. This is a matter of much moment. It relieves us of this device which enabled the coupon holder to intercept the taxes due by the citizen before they reached the treasury of the State. To prevent this, has been a fruitful source of controversy, and the suits arising from this subject have been the cause of forcing the State as a litigant in the State and federal courts. The tax-paying coupon is an imputation upon the good faith of the Commonwealth and a reflection upon her financial integrity, by giving a lien upon her revenues, which is unusual, unnecessary and humiliating. Our people would never ratify a settlement which embraces a bond with this feature attached, however favorable it might be in other respects.

We are to pay two per cent interest for ten years, and after that three per cent for ninety years. Our greatest difficulty will be for the first ten years. Our settlement we are assured will be the cause of bringing population and capital into this State. Each emigrant will help us to bear the burden of taxation, and every dollar's worth of property introduced will contribute its due proportion to our revenues.

WILL WE BE ABLE TO MEET THE INTEREST WITHOUT INCREASING THE RATE OF TAXATION?

I have no doubt of it. See the facts. The report of our auditor shows that in 1880 the amount of property assessed for taxes was $304,663,969; in 1885 it was $347,840, 967; in 1890 it was $380,531,815.

In 1880 the taxable value of our railroads was.....$ 9,876,306 00
In 1885 the taxable value of our railroads was..... 35,955,924 00
In 1890 the taxable value of our railroads was..... 42,500,845 00

With this rate of increase, there is scarcely room for doubt that at our present rate of taxation we will be able to support the government, take care of our charitable institutions and schools and colleges, and our old soldiers, without embarrassment to our finances at present. There will be new sources of revenue; the amount depending upon the prosperity and development of the State, which gives every reasonable assurance that we are not too sanguine in our calculations, and satisfies me of our ability, at the end of ten years, to meet the three per cent rate of interest, and at the end of one hundred years to provide for the principal.

REDUCTION OF EXPENSES.

Upon an examination of my regular message, you will see I have pointed out the way by which our expenses may be reduced thousands

of dollars every year. If you will heed my advice, and enforce my suggestions by proper legislation, enough may be saved to meet any increase necessary for the payment of the annual interest upon the public debt. If in these suggestions we are in error, it is a fact about which there is no speculation, that we have money enough now in the treasury to meet any ordinary deficit, if not wasted by injudicious expenditures.

THE OLCOTT SETTLEMENT BETTER FOR THE STATE THAN THE RIDDLEBERGER.

Had all the outstanding debt been funded in Riddleberger bonds in 1882, the time of its passage, except the bonds held by schools and colleges, we would have had to pay annually, $653,888.83, which up to this time would be $5,884,999.47. This would have taken all of our available revenues, and without increasing the taxes, it would have been impossible to have met our necessary expenses. The State has saved in consequence of the bondholders failing to fund under the Riddleberger bill, in interest, $4,594,850.91. This has enabled her to spend $1,385,085.53 in the purchase of $2,357,576.60 of her own bonds, and thereby reducing her debt to that extent. She has also paid one million dollars arrearages due public schools, and $379,000 of interest due the literary fund; $600,000 to her disabled soldiers, and she has spent over a million dollars in enlarging, improving, and in the support of her eleemosynary institutions. This indispensable work could not have been done with our present rate of taxation, had the whole debt been funded in 1882. Money which would have been paid to satisfy the interest (the creditors refusing to fund), we have used in part for the purposes above indicated, and have compromised the amount by adding to the principal due in 1882, to be paid a hundred years hence. Now our taxable values have increased to such an extent that we can meet all necessary demands for our revenues. If the government be "economically administered," there is no need for a higher rate of taxation. By the two per cent interest for ten years we will save $91,451.56 each year. With this sum judicially invested, we may be able to so reduce the principal of our debt that when we are compelled to pay the three per cent rate of interest, the annual amount due will be within our present revenues, even though there should be no increase in our taxable values, which is scarcely possible.

When we consider the time of this settlement, and the terms of it, there can be no doubt that it is the most favorable proposition we have ever received. Let us then not be in default, but do everything which is required of us to make good the agreement on our part, by an acceptance of the Olcott settlement, and provide for the liquidation of the amount assumed.

By this settlement we will have accomplished much for Virginia beyond what the figures disclose We have eliminated the public debt from the politics of the State, where it has been a harassing question for many years, dividind the people and embittering party feeling Besides, it will

restore confidence in us, and strengthen our credit, because the business and commercial world will see that in good faith we have done all we could do, and all that we were asked to do, to satisfy our creditors. They have selected their own agents, strangers to us, watchful of their rights and zealously guarding their interests, and after much deliberation and a thorough examination of this delicate and perplexing question, have prepared and proposed a plan for the equitable adjustment of the debt, which has been accepted by your commission on the part of Virginia, "the bondholders' committee cheerfully recommending it (the settlement) to their constituents." It was submitted to their advisory board, men of their choice—such men as Cleveland, Bayard and others of national reputation—their friends, not ours. They approved and recommended the plan of settlement of the "Virginia debt," after having carefully considered the question in all of its complications.

If, then, they have sent to us their agents with their proposition, and we have accepted it, and are prepared to comply with the terms of the settlement on our part, the odium of repudiation does not rest on us, and when charged against Virginia is false and slanderous.

The acceptance on the part of the State of their own proposition, so modified that we will be able to meet the accruing interest without increasing our rate of taxation, will unite all classes of our people, and every man who loves his State and will vindicate her honor, will come now to her assistance and the coupon vendor will find no sale for his depreciated currency among our patroitic taxpayers, and the coupon will become as worthless as the shinplaster of a past generation.

But should I be mistaken in this, and there can yet be found taxpayers who are willing to claim protection of Virginia's laws, and will still endeavor to make her crouch at the feet of these few merciless bondholders, in that event legal remedies (yet untried) will be used against all such persons, which will protect our treasury from an influx of the coupons from the bonds held by those who are unwilling to accept the terms of the settlement which Virginia now offers.

NO INCREASE OF TAXATION.

I will say to the bondholders, who are still hoping for better terms, and will not fund under the proposed law, that this is impossible without increasing the taxes. The people will not, and cannot, submit to an increase of taxation—so say they all. They have said so in the Legislature; they have said this in their conventions, and at all times and everywhere. Our people are united on this subject, without distinction of party. And they declare further that their children shall be educated; that the light of our higher schools and colleges shall not be extinguished. We intend also that our unfortunte insane shall be cared for; our old soldiers and their widows shall not be neglected. These determi-

nations are fixed in the hearts of the people of Virginia, and they will not abandon them. These we consider are our highest obligations, and to them we will be faithful, though a cruel necessity may compel us to be delinquent to others. These declarations are not intended as threats, but are a frank expression of the opinions of the people.

Let us be prepared to carry out, in good faith, the agreement which your commission has made with the agents of the bondholders, and in due time all will be well.

For these reasons, I advise that you pass a resolution ratifying and confirming the agreement entered into by your commission with the Olcott committee for the settlement of the debt of Virginia, and that the agreement be referred to an appropriate committee to prepare a bill to carry it into effect."

Mr. Holt:

I want to ask one gentleman a question, your honor, and I think we will be done when we have that one piece of oral testimony.

The Master: I will take a recess then until 11:30.

WILLIAM D. ORD,

called as a witness on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Holt:

Q. Give the stenographer your full name.

A. William D.Ord.

Q. Where do you reside, Mr. Ord?

A. Landgraff, West Virginia.

Q. What is your business or occupation?

A. Coal operator.

Q. Are you a member of what is called the West Virginia Debt Commission?

A. I am.

Q. Do you recall when you were appointed by the governor of that State?

A. About the month of April, 1913.

Q. Did that commission organize after that time?

A. It did.

Q. Were you present at the organization?

A. I was not. It is the only meeting of the commission I have not been present at.

Q. You may state whether or not you or that commission had any knowledge of the value or the disposition by Virginia of the securities mentioned in the supplemental answer of the defendant?

A. At that time?

Q. At that time.

A. I did not, and so far as developed in the discussions by the commission no member of the commission did have. The first thing that attracted the attention of the commission were the words in Justice Holmes' opinion of March 6th, 1911, "As it does not appear that there are any stocks of value on hand."

Q. Did you make that the basis of your investigation?

A. That suggested an investigation, yes, sir.

Q. How was that investigation made by your commission?

A. The commission appointed a sub-committee for the purpose of investigating that point.

Q. Who was chairman of the subcommittee?

A. I was the chairman of the subcommittee.

Q. What did you do then, please, upon the subject suggested by this remark in the opinion?

A. We secured accountants from the tax commissioner's office of the State of West Virginia, and sent them here to make such investigation as the limited time would permit. We

were being hurried by motions to speed the cause in the Supreme Court, and only got time for more or less hurried examination.

Q. Where did the data come from upon which the supplemental answer was based?

A. It came from these accountants to the subcommittee, and through the subcommittee to the whole committee.

Q. You may state whether or not you discussed about that time, or at any time, with Governor Hatfield of West Virginia, or the Board of Public Works, or any of the State officials, the question of these values, and if you did whether or not they evinced any knowledge upon the subject prior to this investigation.

A. I had several discussions at that time with Governor Hatfield on the matter, one or two with the Board of Public Works.

By the Master:

Q. Was that the Board of Public Works of West Virginia?

A. Yes, sir, the Board of Public Works of West Virginia.

The Witness: And with various other State officials, and I do not remember any of them disclosing any knowledge of those things.

By Mr. Holt:

Q. After this investigation had been made by your subcommittee were any negotiations had with the Virginia Commission looking to a compromise and adjustment of this matter?

A. Yes, we had negotiations with Virginia, commencing in Washington on March 4th, 1914.

Q. You may state whether or not the West Virginia Commission made a proposition to the Virginia commission?

A. The West Virginia Commission did make a proposition to the Virginia Commission.

Q. Was that proposition in writing?

A. It was.

Q. Has a true copy thereof been exhibited with the supplemental answer?

A. It has, on page 47 of the printed supplemental answer, Exhibit A.

Q. Did the Virginia Commission make a response thereto?

A. It did.

Q. Was that response in writing?

A. Yes, sir, it is Exhibit B, on page 63 of the printed supplemental answer.

Q. Was any rejoinder thereto made by the West Virginia Commission?

A. There was. It is found on page 66, marked Exhibit C of the supplemental answer.

Q. That is of the printed supplemental answer?

A. Yes, sir.

Q. You may state whether or not this proposition was made wholly in an effort at compromise, or for any other purpose?

A. Solely as a compromise proposition.

Mr. Holt: The object was simply to prove these exhibits.

The Master: I understand that that was simply a negotiation, and was not therefore binding as a proposition.

Mr. Holt: Exactly.

The Master: It will be so treated.

Mr. Holt: Gentlemen, you may cross-examine.

Mr. Harrison: I do not think we need to cross-examine.

Mr. Holt: Now, your honor, I believe we have reached the point where we can rest, with the understanding, however, as suggested by the master heretofore, that if we have overlooked a schdule or a statute or a fact we may have an opportunity to introduce it.

The Master: With precisely the same effect as if it was introduced now.

Mr. Lilly: I might make one inquiry, and that is with reference to the exhibits that were offered several days since the reference to the settlement of the United States Government. There were two large exhibits showing that in detail, and there was something said with reference to a stipulation or agreement, and I do not know whether the exhibits were

really filed or just passed over for examination, and we would like to understand in that regard.

The Master: Does not your record disclose that?

Mr. Lilly: My memory is that they were not filed.

Mr. Hogg: I do not think the record shows that. My recollection is that they were offered and the master stated that they looked a little cumbersome and they should be stipulated in order to save space; but while they were not marked, yet the understanding as I recall it was that they were in unless stipulated out.

The Master: It may be so understood.

Mr. Holt: I suppose that will be satisfactory.

The Master: Yes.

Mr. Hogg: The record shows that.

The Master: With the exception of these schedules relating to dividends and interest on loans submitted by West Virginia showing those matters in detail, I understand those have not been checked up, and I do not know whether you care to check them up, but with the exception of those schedules I understand that no question is raised as to the accuracy of the schedules submitted by West Virginia covering the whole case in so far as they state facts from the records and in so far as they make computations. The conclusions that are sought to be drawn therefrom by West Virginia are not conceded by Virginia, but the accuracy of the figures themselves is conceded

Mr. Harrison: That is my recollection.

The Master: Unless something develops some error in that admission, that cleans up every schedule that West Virginia has thus far put in as a matter of statement of figures and as a matter of computation.

Mr. Holt: I think Mr. Potter concedes them all.

The Master: This takes care of it. As to these schedules in relation to the question of interest, whether you care to go over these or not I do not know, but you can advise me about that later.

Mr. Harrison: Yes, sir.

The Master: Are you ready to proceed, Mr. Harrison:

Mr. Harrison: Yes, sir. I think it has already been under-

stood, has it not, that any evidence or facts that either side may deem pertinent shall be admitted and considered by the master after this hearing has been closed and before the matter is finally submitted to the Master? Is not that the understanding? Did you not indicate yesterday that that would be true?

The Master: Yes. I will make this statement. I expect the parties on either side, so far as is possible, to close the hearing while we are going on now, and put in everything that is within their reach, so that the case in a sense may be considered as closed. Now, then, after that is done, if it develops that either side, when they come to prepare their argument in connection with this case finds that any fact that they deem to be material has been inadvertently omitted, I shall open the case at the time of the argument to give either side an opportunity to prove such fact; and at that time giving the other side, if necessary, time to answer such fact that may be proved by the other side. The purpose of this suggestion is that, while I want everything closed up now, I do not want the counsel to feel that they are absolutely foreclosed. And I want the Supreme Court to know from this record that no inadvertence that may be discovered before this case passes from my hands will fail to be corrected, with a full opportunity, by either party. So that when it finally reaches the Supreme Court they will know that each party has had every possible opportunity to establish their contentions and to prove every fact that they deem to be necessary. Do I cover the ground now?

Mr. Conrad: We know of nothing. But of course after a case is finished, sometimes something occurs to us.

The Master: I thought it wise to make this suggestion. Of course I know how counsel feel. Sometimes you feel a sense of annoyance about something that you have omitted. If that is the case, no harm will be done, because each of you will have an opportunity to put in anything that you may have omitted. Do I make that perfectly clear?

Mr. Lilly: Yes, your honor.

PLAINTIFF'S TESTIMONY

ARTHUR G. POTTER,

called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Harrison:

Q. Mr. Potter, please state your residence and occupation.

A. I live in New York City and I am a certified public accountant by profession.

Q. Mr. Potter, will you please state in a general way your experience as an accountant and the character of work which you have done as such.

A. I became a professional accountant in 1900 and have been following general practice ever since. That includes such matters as financial investigations, audits, advising systems for various lines of business, etc., the general practice in accountancy.

Q. Are you the accountant who had charge of the investigation made in this case which was embodied in the original record?

A. Yes, sir.

Q. Have you prepared a schedule, Mr. Potter, relating to the sinking fund, receipts and disbursements, under Class A?

A. Yes, sir.

Q. Please state what the exhibit shows and hand copies to counsel on the other side and one to the Master.

A. This exhibit is a summary of the transactions of the sinking fund from January 1st, 1861, to December 31st, 1871. It starts with a balance on hand as shown in the record in this case, and there is added thereto the receipts between January 1st, 1861, and June 20th, 1863. Then follow the receipts between June 20th, 1863, down to December 31st, 1871, arriving at a total. That covers receipts. As to the disbursements, they are shown first between January 1st, 1861, and June 20th, 1863, a balance struck, and then between June 20th, 1863, and December 31st, 1871.

By the Master:

Q. And your balance on hand agrees with the statement in the supplemental answer?

A. Both on January 1st, 1861, and June 20th, 1863.

By Mr. Harrison:

Q. And that balance is shown on your exhibit?

A. Yes, sir.

Q. The balance January 1st, 1861, was shown to be $819,250.03. That is correct, is it not?

A. Yes, sir.

Q. And the balance June 20th, 1863, was shown to be $143,195.90; that is correct, is it?

A. Yes, sir.

Q. And those two items correspond with the exhibit filed by the defendant in this case?

A. They do.

Q. You continue the statement to December 31st, 1871, do you not?

A. Yes, sir.

Q. Showing the total receipts to that date and total disbursements also?

A. Yes, sir.

Q. Please give the totals as of December 31st, 1871.

A. Total cash on hand December 31st, 1871?

Q. No, not that. I want you to state the total interest paid by Virginia from January 1st, 1861, to December 31st, 1871, on the public debt as it existed on the 1st day of January, 1861, as shown by the record.

A. $7,094,103.61.

Mr. Holt: Your honor, we do not care of course to interrupt the examination, but I suppose it is understood that any objection we may have to a portion of this schedule as being immaterial, I suppose that is understood.

The Master: That is reserved, yes.

Q. Now, you have just stated that the net interest paid by Virginia on January 1st, 1861, to December 31st, 1871, was $7,094,103.61. Was that the net interest paid by the Com

monwealth of Virginia on the debt as it was ascertained by the original record to exist on the 1st day of January, 1861?

A. No, sir, it was the interest paid on the entire debt of the State of Virginia. There were some issues after January 1st, 1861. This is a transcript of the operations of the sinking fund, taken from the sinking fund cash book.

Q. And it shows the payment on the entire debt prior to 1861?

A. Yes, sir, and also what was issued after January 1st, 1861, the items being inseparable without a great deal of labor, to determine what issues came out after January 1st, 1861.

Q. Now, state what your exhibit shows in respect to bonds issued after 1861, and for what purpose they were issued.

A. The third sheet in this exhibit is a copy of the second auditor's report of December 1st, 1861, table B, page 9, in which is stated the amount of bonds issued under the act of March 2nd, 1866, for interest which had not been paid in cash.

Q. In what amount?

A. $6,576,913.60.

Q. Now, your statement also shows an item of unfunded interest due the 1st of January, 1867, and fundable in bonds under the act approved March 20th, 1861, which you have added to the amount of the bonds, $582,761.79, does it not?

A. Yes, sir.

Q. Making the total amount of the bonds issued under the act of March 2nd, 1866, to pay interest, and the unfunded interest due January 1st, 1867, $7,159,675.39?

A. Yes, sir.

Q. Now, please give the amount of your totals shown on that third sheet of your exhibit, and what they represent.

A. The $7,094.103.61 is the total interest paid by the State on the unfunded debt and cash as shown on the first and second sheets of this exhibit.

Q. Between what dates?

A. Between January 1st, 1861, and December 31st, 1871. The item of $6,576,913.60 is the amount of the bonds issued under the authority of the act of March 2nd, 1866. It will be observed that I did not add to this the amount of the unfunded

interest fundable, which you have just spoken about; the total of these two items is $13,671,017.21, representing the interest paid by the State of Virginia on the unfunded debt in cash and in bonds. I might say as at the 1st of December, 1871, as that is the date of the second auditor's report.

Q. Your pages 1 and 2 of your exhibit show the interest paid in cash from January 1st, 1861, to December 31st, 1871, by the State of Virginia, on the undivided debt, does it not?

A. Yes, sir.

Q. It goes into these details there?

A. Yes, sir.

Q. And the third page shows the payments made by her in bonds in satisfaction of interest between those two dates?

A. Yes, sir.

Q. And the total cash payments and payments in bonds is also shown on the third sheet?

A. Yes, sir.

Q. I will ask you to have that exhibit marked Plaintiff's Exhibit No. 1.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 1, September 10th, 1914, C. B.

Mr. Harrison: Will it be proper to identify this in some way as on the rehearing, because in the original records there are original exhibits.

The Master: I think we can go right ahead with Plaintiff's Exhibit 1 in this record. If any reference is made to the other record we will call it the original record, and when we say the record, that means this hearing.

Mr. Hogg: That distinction is made already in the record.

The Master: Plaintiff's Exhibit No. 1 refers to this record. If you want to refer to exhibits in the other record refer to the exhibit by number in the original record. I think that explanation will be all right.

Mr. Harrison: Now, we shall want to file, we have not a copy of it this morning, an act of March 2nd, 1866, under which

bonds were issued for the purpose of paying interest as shown by the exhibit.

The Master: Then funish the stenographer with the volume and page, etc. and he can insert that in the record, and that is subject to the suggestion that the effect of it may be stipulated and make it unnecessary to publish the whole act.

Mr. Harrison: I think that will be sufficient. We do not want to publish the whole act.

By the Master:

Q. I understand you have no criticism of the following items found on Defendant's Exhibit 1, page 1 of Exhibits, balance State funds $23,985.18; Board of Public Works $5,958.28; Commonwealth fund $252,842.67, which with your balance of $819,250.03 results in an aggegate of $1,102,036.16, I understand you have no criticism of these items?

A. No, sir.

Mr. Harrison: Class B, the testimony which we want to introduce at this time by this witness under this class with relation to the Richmond, Fredericksburg & Potomac Railroad stock are the market quotations which have not yet come up to us, but we will introduce them later, and I simply mention it and pass on.

By Mr. Harrison:

A. Please insert in the record the market quotations that you have compiled relative to the Richmond, Fredericksburg & Potomac Railroad Company, and state the sources from which the quotations have been derived.

Mr. Holt: I would like to inquire at this point, your honor, how far Mr. Potter has covered those market quotations, how far down he came.

Mr. Robinson: I can say that the quotations in respect to the Richmond, Fredericksburg & Potomac as well as everything else that we could find, in some cases goes further than others, but the exhibit will be up here very shortly. It covers 1861 and 1863 in this case.

Mr. Holt: Does it come down to the present time?

Mr. Robinson: No.

Mr. Harrison: It relates to the two dates that are under inquiry, 1861 and June 20th, 1863.

Q. Under Class C, Mr. Potter, of the original answer, page 54, proceeds of sales of securities, etc., have you prepared an exhibit on that subject?

A. I have.

Q. Please state first what it shows?

Mr. Lilly: May I ask a question?

By Mr. Lilly:

Q. Have you submitted that or any other exhibits to West Virginia's counsel or accountant, Mr. Potter?

A. We did not have your final exhibit until about noon yesterday. We have had no opportunity to submit anything.

Mr. Lilly: I do not want to be captious or even tending towards biliousness, but we have consistently furnished the gentlemen on the other side with our records, our data, our schedules and everything else; and here we are confronted, after this case has been going on three weeks, with a great array of schedules, not one of which, or any part thereof, has ever been submitted to us. I do not think it is in keeping with our treatment towards them in that regard, or in keeping with the suggestion of the Master.

The Master: All I can say about that is—

Mr. Harrison: Just let me say one word, if your honor please. If my memory serves me correctly our friends never handed us any exhibit until they were handed to us by the witness.

Mr. Lilly: Was it not agreed that you should submit them to us?

Mr. Harrison: We could not get up exhibits until we had your work. We have been working against time to complete these, and really have not finished them yet.

The Master: This is the situation; of course this does not affect the legal rights of either party—I can only say this, it has been incumbent upon the plaintiff to submit to the other

side everything in the line of a schedule that they intended to rely upon, as soon as it was prepared. That is as far as I can go. If they have done that they have complied with my instructions, and if they have not done it they have not complied with my instructions.

Mr. Harrison: We have done it as far as we were able to.

The Master: If it turns out that the Virginia people have not submitted these exhibits from time to time, as fast as they have had them completed, to West Virginia, they have not followed my instructions; and if it be true that West Virginia has not done the same thing, they have not followed my instructions.

Mr. Lilly: We have submitted them before we could check them up, even with inaccuracies in them.

Mr. Harrison: The inaccuracies were discovered by the cross-examination.

The Master: We do not need to take time for discussion on this matter. I do not say that it is not proper for Mr. Lilly to call attention to it.

Mr. Anderson: I do not think either side is in default here at all, as I recall the facts. This tentative agreement was made in the preliminary hearing of this case in New York, and it was then understood that West Virginia would furnish to us in advance of the hearing here, as fast as they could prepare them, all of the schedules which they proposed to submit, which they could prepare before the hearing. When we came here, two months had elapsed, and during that time we had not received a single schedule from our friends. When we came here on the first of August we were furnished with a few schedules. Now we could not prepare replies to those schedules until we had them, and we could not prepare them during the hearing, because our expert accountant had to be here during the hearing to understand what was meant by the figures in the schedules submitted by the other side. We are not complaining of them, but we prepared the schedules just as soon as we could after we had the information which enabled us to prepare them. We had to know what their schedules were in order to know what their claims were, and we could not reply

to them until after the hearing, because our expert accountant had to be here, as they understand very well, during the whole of the examination. He could not work here and prepare those schedules at the same time.

Mr. Lilly: This schedule refers to Class A that we introduced nearly three weeks ago, and there is not a thing that they did not know then and could not have had up. I do not care to pursue it further. I just want to make that protest.

Mr. Holt: The fact remains that all of our exhibits for 1861 have been in the hands of the opposition for nearly three weeks.

The Master: I am going to make this suggestion. Of course the fact that a schedule has not been furnished by one side to the other does not necessarily affect the integrity of the schedule. My attention is not called to it for that purpose. If it develops that a schedule has been withheld from the other side for a purpose that is ulterior and that affects the integrity of the schedule, that will develop as we go along. It is open to West Virginia to find out on cross-examination when all of these schedules were completed by the accountant, and if they were not submitted to the other side according to the request of the counsel it is up to them to find out why. And if that has weight and significance, they are entitled to the benefit of it. Of course, we do not get anywhere by discussing it further now. I want it understood that as far as I am concerned it does not prejudice either party, so far as the hearing at present stands; and the only significance it can possibly have is the effect it may have upon the integrity of a schedule. Whether it has any or not, that will be a matter for me to say when the facts are developed, if there are facts to be developed.

Mr. Harrison: I never saw the schedules until yesterday myself, and we are not much better off upon our side than the counsel on the other side. I knew what was being prepared, but I never laid my eyes on them until yesterday evening about four o'clock, and then only two of them.

The Master: Of course, without commenting further, I think I appreciate the significance of the situation, and I want to repeat that it is perfectly proper for the Attorney General

of West Virginia, if he thinks they have not had the treatment that they ought to have received, to call attention to it. And with the suggestion that I have made, we will go right along.

Q. The question, Mr. Potter, was to explain what that exhibit shows.

The Master: So far as the schedules themselves show just exactly what the witness would say, I suggest whether it would be necessary to go over them in detail.

Mr. Harrison: That is exactly the reason I asked the question in the form I did. I want him to make a general statement of what the exhibit shows, but I do not want to take up the items in detail.

The Master: That was exactly my suggestion.

A. This schedule shows in the first column the amounts claimed by West Virginia under Class C, bringing it to the same total as shown by the revised schedule which I received yesterday for Class C, the Defendant's revised Schedule C. The next column, or the next two columns, show the par and the market of the bonds of the State of Virginia, received by Virginia from these internal improvement companies, issued by Virginia prior to January 1st, 1861, and surrendered by the internal improvement companies in payment of the State's interest to that internal improvement company. They are then extended at the market value, as near as it could be ascertained on the date on which the company surrendered the bonds to the State. The next two columns show the same thing with respect to bonds issued under the Act of 1866. In some of the records of the State these bonds are designated as old and new, the old applying to issued prior to January 1st, 1861, and the new applying to the issue of 1866. Next comes a column in which is the amount of cash received from these same companies, in full or part payment of their debt to the State; following which comes a column in which this cash is reduced to a gold basis. And the column at the extreme right is the total net gold value of the entire recovery by the State of Virginia for her interest in these 19 items under Class C. I must make one qualification in regard to this. The bonds received from the United States Government claim were intended to be

entered, but I notice just now that they have been omitted. I would like the privilege of changing the schedule to that extent.

Q. Where would you insert that?

A. On the second page, opposite No. 17, under the value of bonds issued prior to January 1st, 1861, under par, and extended under market at a market quotation as near to the date on which Virginia received the bonds back as is obtainable.

The Master: Do this the first thing in the intermission.

The Witness: Then the schedule is supported by sheets showing the details of these bonds, new and old, and the market quotations and the dates; but those sub-schedules have not yet been finished. This schedule was finished not more than an hour ago. I do not know just how soon the sub-schedules will be in, but they merely amplify the information contained on the top schedule.

Mr. Hogg: To be read in connection with this, I suppose?

The Witness: Yes, sir, that is the intention.

Q. Your first column under the head of claimed by West Virginia as value January 1st, 1861, represents the figures testified to by West Virginia as being the value of those respective items on that date, does it not?

A. Yes, sir.

The Master: Represents the books value?

Mr. Harrison: Yes, it represents the book value or whatever kind of value. It was sometimes called book, sometimes face, and sometimes other kinds.

The Master: Except as Mr. Hillman may have qualified his statement as the result of his examination, I understand that West Virginia up to date relies practically upon what is known as book value, so far as stocks are concerned.

Mr. Harrison: Yes, sir.

The Master: And so far as loans are concerned, on face value, so that there will not be any misunderstanding about it.

Mr. Harrison: That column contains the West Virginia figures.

The Master: As finally corrected.

Q. The West Virginia figures in respect to the value of the stocks and the bonds mentioned in that column?

A. Yes, sir.

Q. Now, Mr. Potter, please state the sources from which you derived the data that you have embraced in this schedule?

A. Par value of the bonds surrendered by these internal improvement companies is the same I believe in almost every instance as used by West Virginia and derived from the same sources. That is also true of the cash. The quotations, the market quotations at which they have been reduced, have been taken from the files of newspapers in the State Library on the floor above us, particularly the Richmond Dispatch. It contains quotations from the New York Exchange, the Baltimore Exchange and the Richmond Exchange. We have used the nearest quotation that we could find to the date on which the internal improvement companies surrendered the State bonds. In a number of instances, the dates were not given with any exactness, and on those dates we applied the dates which appeared in the sinking fund records, the journal of the sinking fund being quite definite in that regard. The rate at which the cash is reduced is a part of the original record, being Plaintiff's Exhibit E-2, on page 647 of the original record, showing the value of Confederate currency in gold from 1861 until 1865.

Q. You have prepared this schedule on the basis of what West Virginia claims as book value; am I right, book value of the respective items in that list?

A. Yes, sir, that is my understanding.

Q. You did not take the par?

A. Par of what, Mr. Harrison?

Q. The par of those items, the par value as shown on the West Virginia exhibit. Take, for example, the Orange & Alexandria Railroad Company. By reference to Defendant's Exhibit No. 3, page 13, I find that stock par value is $874,500, while the book value given January, 1861, is $932,566. Those are the figures that you took?

A. Yes, sir.

Q. And you do not make this statement on the basis of the par value?

A. No, sir. Those figures are merely put there to identify the item, and the calculations to the right of the first column are not based on any value, either book, par or anything else as of record, but they are based on what Virginia got.

Mr. Holt: It would be book value in the case of stock, and in the case of loan, what we call face value, I suppose.

Q. The calculation is on the basis of what Virginia actually received for the several securities mentioned in the list?

A. Yes, sir.

Q. I will ask you to mark that exhibit Plaintiff's Exhibit No. 3, and file it?

A. I file it so marked.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 3, September 10th, 1914, C. B.

Q. Going back a moment to Plaintiff's Exhibit No. 1, Mr. Potter, I think I omitted to ask you the sources of your information upon which that exhibit is based and the accuracy of it as well as the accuracy of the last exhibit which is filed.

The Master: You agree with the other side on that. I would not spend any more time on that.

Q. You can state just the sources of your information briefly.

A. The cash book of the sinking fund now in the Second Auditor's office as to the first two pages. There are some extracts or notes on that page which are not shown entirely in that book, but the information is all in the record I believe now in regard to the item on the first page relating to the $443,300. Do you wish me to go into this categorically?

Q. No, I just want you to give a general statement as to the sources of your information so that it may appear.

A. The next regarding the—

The Master: You need not give any more detail about that. There is no disagreement between the two of you on that.

The Witness: The information on the third page is, as in-

dicated, taken from the annual reports of the officers of the State of Virginia for 1871, and is a copy of the Second Auditor's report.

Mr. Lilly: There is no page reference and there is no guide to our accountant by which we can ascertain or check up your data.

The Witness: My impression is that the cash book is not paged. There is only the one and I am sure that your accountant knows all about it.

Mr. Holt: The point is, your exhibit does not give the book or page for showing the source of information, that is it.

The Witness: It does not mention any book, it does not give any page on the first and second pages for the reasons stated.

Mr. Holt: You referred to certain reports. Did you mean printed reports?

Mr. Harrison: The report of the Auditor is on page 3.

The Witness: Printed annual reports.

The Master: The third page gives the source.

Mr. Lilly: We are talking about Exhibit 1, your Honor.

The Master: Yes, the third page states on Exhibit 1, Second Auditor's report of December 1, 1871, Table B, page 9, right on the head of it.

Q. Before leaving Schedule 1, Plaintiff's Exhibit No. 1, Mr. Potter, it might be appropriate to put in there an exhibit or two as it relates to an item in that schedule. I refer to the payment of $886,685 under the caption Virginia & Tennessee Railroad, account of mortgage, $1,000,000. I want to file with your testimony an extract which was read here bearing upon that payment and its repudiation. Have you those extracts with you?

A. No, sir, they have not been copied yet.

Mr. Harrison: I thought they had, or I would not have stopped you. I will have to do that later on.

Mr. Holt: Was it not read into the record the other day, Mr. Harrison?

Mr. Harrison: Yes, I did read it in and intended it to go

in as proof, but I understood you gentlemen to object to that method, and say that you wanted it put in with our evidence.

The Master: Have it struck out there and put in here. I think there was a question raised about that, as to whether the evidence would be put in in that way, and I simply said that if it was insisted on it could not be done by way of an answer; but Mr. Harrison did read those extracts into the record. If it is agreed, those extracts may be cut out of the record in that place and inserted here.

Mr. Lilly: But there were questions based on them.

The Master: I think you can cut out the whole examination. My recollection is that the examination was not material.

Mr. Holt: Suppose in order to avoid the cutting out process we treat them as having been introduced.

Mr. Harrison: Just treat them as introduced.

Mr. Lilly: By the plaintiff.

The Master: Yes. Treat them as having been already properly introduced, and that saves repeating them here. Had you completed with this schedule, Mr. Harrison?

Mr. Harrison: Yes, I am through with it.

By The Master:

Q. Mr. Potter, in the column marked par, if I understand it correctly, you have inserted all sums received, and then where they were received in bonds you have carried out the market value of the bonds at the time of their receipt, is that right?

A. Yes, but I think you will find that under that column, prior to 1861, and bonds of 1866, there is nothing else but market. That relates solely to the bonds surrendered, those four columns. There is no cash entered in those columns. The cash is taken up in a separate column just beyond.

Q. Yes, cash received.

A. Yes, sir.

Q. So as to be sure I am correct, the first item, Orange & Alexandria Railroad Company, par of $745,341.48, that represents bonds that were received in connection with the payment

of that stock and loan, prior to January 1st, 1861?

A. Yes, sir.

Q. And then in addition to those there was received bonds issued under the Act of 1866, found under the other column par $129,365.83?

A. Yes, sir.

Q. Those two added together show the total amount of bonds and the class of bonds received in connection with the payment for that stock and that loan?

A. Yes, sir.

Q. And then you have figured out the par of those separate issues of bonds in the column indicated?

A. Figured out the market?

Q. Yes, the market.

A. Yes, sir.

Q. At the time of the transaction?

A. Yes, sir.

The Master: I get it then.

By Mr. Harrison:

Q. Now, Mr. Potter, I will ask you if you have prepared an exhibit dealing with Class D?

A. Yes, sir.

Q. Found on page 55 of the Defendant's supplemental answer?

A. I have.

Q. If so, will you please explain, as you have been doing, what that exhibit shows?

The Master: We are right close to adjournment, and I will suspend here until half-past two.

At this point a recess was taken until 2:30.

AFTER RECESS.

Mr. Harrison: I will go back for a moment to Class C.

The Master: I find bound into my Class C the supporting

schedules, and as I understand it you want to include those.

Continuation of the direct-examination of

ARTHUR G. POTTER,

By Mr. Harrison:

Q. Have you corrected Schedule C, Plaintiff's Exhibit 3, in respect to showing the amount of the bonds held by the State of Virginia, of the United States Government?

A. Yes, sir.

Q. And the market value of the same?

A. Yes, sir.

By The Master:

Q. And have you made that correction on the copies the other side have?

A. Yes, sir.

By Mr. Harrison:

Q. And have you extended the totals?

A. Yes, sir.

Q. And have you attached the supporting exhibits showing the market quotations of the securities?

A. I have in some of the copies, to the one furnished to the stenographer and the two to West Virginia; and the others will follow as soon as they are finished.

Q. The question was if you had attached them to the exhibit which you now file?

A. Yes, sir.

Q. Are you prepared to introduce Schedule No. 2, the quotations?

A. Yes, sir.

Q. Please explain Exhibit No. 2 briefly and file it with the stenographer and mark it Plaintiff's Exhibit No. 2.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 2, September 10, 1914, C. B.

The Master: This, Mr. Stenographer, will be inserted in its proper chronological order in the record.

A. This exhibit contains quotations on Virginia State stock or Virginia bonds beginning with 1860, and giving quotations at various dates up to 1887. Following that are quotations on the Farmers' Bank of Virginia, Exchange Bank of Virginia and Bank of Virginia as of the latter part of 1860, and the beginning of the year 1861, and as of 1863, as near June 20th, as it was possible to find them. Following that are quotations on Orange & Alexandria Railroad Company six and eight per cent. bonds and some on the stocks of the Orange & Alexandria. Following this is quotations on the Chesapeake & Ohio Canal Company, Manassas Gap Railroad Company, Richmond & Danville Railroad Company, Richmond & York River Railroad Company, South Side Railroad Company, Virginia Central Railroad Company, Virginia & Tenessee Railroad Company, James River and Kanawha Company, Richmond & Petersburg Railroad Company, Richmond, Fredericksburg & Potomac Railroad Company. These are the only quotations we have been able to find in our researches, and we used for the purpose the files of the Richmond Dispatch in the Public Library in this building.

Q. Quoted on the dates set opposite the quotations, are they not?

A. Yes, sir.

The Master: As I understand it, this exhibit, Mr. Harrison, refers to the quotations you have been able to find relating to any of the subject matters involved in the controversy.

Mr. Harrison: That is what I understand.

The Master: All of which are stated in detail by Mr. Potter?

Mr. Harrison: That is correct.

The Master: And so far as they cover dates, for instance, it is from one date to another date, that all the quotations between those dates—

The Witness: No, not necessarily. For instance, we wanted to use a value of January 21st, and one at June, 1863, and if the quotation happened to be the same on two or three

different dates, we would take the nearest date.

Q. In other words, between two given dates, no quotations are left out that would vary the statement?

A. No, sir.

Q. And if none are stated, either none appeared or they are identical with those that are stated?

A. Yes, sir.

The Master: That gives me an idea of the effect of it.

The Witness: That is not entirely true of the matter of the Virginia State bonds, because there we got quotations on dates at which internal improvement companies settled with the State, and there might be November, 1860, or thereabouts, and the next one might be June, 1863.

The Master: Yes, exactly.

The Witness: Or 1873, or 1883.

Q. You would not carry all the quotations exactly from 1860 to 1873?

A. No, sir.

Q. But all the quotations that you have undertaken to give, grouped around a certain date are given in full?

A. Yes, sir.

By Mr. Harrison:

Q. Mr. Potter, referring to your Exhibit 3, the supporting exhibit filed with that now, beginning with the heading "Bonds," shows the computations—or you can state what that shows?

A. It shows in more detail than was possible on the top schedule the amount of the bonds and the date received and the market quotations at which the amounts are extended. Following that are several sheets covering cash transactions, giving the date the cash was received, the gold equivalent on that date, and the extension.

Q. Were the market quotations the nearest to the date on which the stocks, etc., were received?

A. Yes, sir.

By The Master:

Q. And you have taken the nearest quotation as the proper

quotation for that date?

A. Yes, sir.

Q. Wherever you have not found a quotation on that date?

A. Yes, sir.

Q. Am I right about that?

A. Yes, sir.

Mr. Holt: Now quotations is Exhibit No. 2, is it?

Mr. Harrison: That is right.

The Master: The detail of quotations is Exhibit No. 2, but on Exhibit 3 he has quotations that are applied to various items.

Mr. Harrison: Applied to items on Exhibit C.

The Master: And those quotations in Exhibit 3 will of course be found duplicated in Exhibit 2.

Mr. Robinson: They are copies from 2.

Mr. Holt: In other words, No. 2 Exhibit, which is devoted exclusively to quotations, embraces everything that is in on the subject of quotations.

The Master: That is the way I understand it. All the quotations that are found on Exhibit 3, Class C, except errors that may have been made in transcription, are identical with the same entries that will be found on Exhibit 2; that is right, is it not?

The Witness: Yes, sir, that is right.

The Master: Of course unless some errors have been made in carrying the account forward. If there should happen to be an error, I suppose we should be safe in relying, probably, on Exhibit 2, because that is devoted entirely to quotations.

By Mr. Harrison:

Q. Have you corrected the sub-schedule to Exhibit No. 3, in reference to the claim against the United States Government, or have you only corrected the top schedule?

A. Only the top schedule in that case, Mr. Harrison. I did not have time to fix the other one. The sub-schedule would simply show that a certain amount of bonds of old unfunded bonds—

The Master: When you say top schedule, you simply mean

this schedule as distinguished from the sub-schedule?

Mr. Harrison: Yes.

Q. What was the date of your quotation, Mr. Potter, on that item? You might as well put it in and correct it.

A. The quotations on fundable Virginia bonds were the same on January 1st, March 12th, and March 15th, in the year 1892, that is 26; and that is the rate I used in reducing the bonds received from the Government.

By The Master:

Q. I thought that was the adjustment made as of 1894.

A. Which was the nearest date that I could find on the Virginia bonds.

Q. Your sub-schedule shows that?

A. It does not now, but I will make it show it.

Q. You will see that it does?

A. Yes, sir.

Mr. Robinson: The record shows it right here anyway; that is the point.

The Master: Exactly.

By Mr. Harrison:

Q. Now, I will take up the exhibit with reference to Class D. Will you please state as you have been doing what that exhibit shows?

A. It shows the net cash equivalent received by the State of Virginia for the income, interest and dividends which had accrued prior to January 1st, 1861, and was received by the State after January 1st, 1861, from internal improvement companies as shown in Defendant's Class D.

Q. Class D in the supplemental answer related to interest on loans and dividends on stock accrued prior to January 1st, 1861, upon common investments and collected by the State of Virginia after January 1st, 1861, and your exhibit relating to that class shows the scale value, does it not, of those receipts?

A. Yes, sir.

By The Master:

Q. It reduces the items mentioned in Class D to a gold basis as of the dates of their receipt, is that right?

A. Yes, sir.

Q. That is the effect of your Exhibit No. 4?

A. Yes, sir.

By Mr. Harrison:

Q. Will you file that exhibit and mark it Plaintiff's Exhibit No. 4?

A. Yes, sir.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 4, September 10th, 1914, C. B.

By The Master:

Q. With that exception the schedule agrees with the schedule on the same subject already introduced by the defendant, as I understand it?

A. It deals with the same figures.

Q. The same items?

A. The same items and merely reduces them to the gold basis.

Q. The only discrepancy there would be between your schedule, Plaintiff's Exhibit No. 4, and the schedule of the dedefendants relating to the same class would be the difference resulting from a reduction of the items as of the dates of their payment to a gold basis?

A. Yes, sir.

Q. The principal sum remains the same?

A. The principal sum remains the same.

The Master: Now, we come to Class E.

By Mr. Harrison:

Q. Now, in respect to Class E, Mr. Potter, please state whether or not any exhibit that you have filed deals with the values of the bank stocks set forth in Class E?

A. Yes, sir, Plaintiff's Exhibit No. 2.

Q. By giving the market quotations?

A. By giving the market quotations, yes, sir.

By The Master:

Q. Do the items in Exhibit 2 which deal with these six items in Class E differ in any way from the same items presented by the schedules of the defendant except in a reduction of the items to a gold basis upon their respective dates?

A. No.

Q. The principal sum remains the same?

A. I don't quite get the question.

Mr. Robinson: He has not given any computations. The summaries on that are not ready yet; they are being worked on.

The Master: What you propose is a little later to file in concrete shape a schedule under this class, but the data will be drawn from Exhibit No. 2, but for convenience it will be put into concrete shape under Class E?

Mr. Harrison: Yes, sir.

The Master: I get your point.

By Mr. Harrison:

Q. Which of those bank stocks do the quotations relate to?

A. Farmers' Bank of Virginia, Exchange Bank and Bank of Virginia.

Q. You found no quotations as to the Bank of the Valley?

A. No, sir, no quotations as to the Bank of the Valley.

Q. Did you examine for quotations as to the Northwestern Bank and Fairmount Bank?

A. We did not make any search for those banks.

The Master: Those are evidently a little different class from the others. By the way, right there, I do not remember just now whether the schedule of West Virginia differs very much from my finding in the report. The amount stated in the answer here as far as the Fairmount Bank is concerned is identical with the finding in my report, and so far as, I think, the Northwestern Bank was rendered subject to adjustment by reason of the fact as I understood somebody to say, that

there was a branch somewhere in Virginia, but I have not seen any evidence in the case relative to that. You want to bear that in mind, that that is a factor to be considered. Something must be put in the record so I will know something about it. As I understand, the suggestion is that the whole of the Northwestern Bank should not be charged in the last analysis to West Virginia by reason of the fact that one of its branches was then and continued to remain in the State of Virginia. I think all there is in this record that tends to show that is the statement of Professor Hogg that that was the fact. That of course is not evidence, and if you want that fact to appear, somebody must see that it gets into the record so if it is entitled to consideration it will receive it. I call your attention to the fact, because you may have omitted that. My recollection is very distinct that there is not a word in this record so far as the testimony goes that tends to establish that fact, if it is a fact.

Mr. Robinson: You will find it in the original record.

The Master: Of course I do not carry that original record in my head.

Mr. Lilly: I suppose Virginia charges us with whatever we got out of the Northwestern Bank. It is not in the record yet that we got anything except possibly by an Act.

The Master: I think the original record establishes more or less facts on that ground. It would not be safe in any event to rest on that, because when we get through they may call your attention to facts in the original record which tend to establish a different proposition. I simply call attention to this now so that if either side rely upon the fact that there was a branch in Virginia which should minimize the amount to be charged to West Virginia, whoever relies upon that proposition had better see that it gets into the record. It may be in the original record. All I can say about that is that I have not got the slightest recollection about it.

Mr. Hogg: All of the branch banks, both of the Farmers' Bank and the Northwestern Bank, appear in Plaintiff's general Exhibit No. 1. The branches that were established ap-

pear in Plaintiff's Exhibit No. 1 in the original record.

Mr. Holt: It is conceded to be a supplemental exhibit if it is already in the record, and there is evidence enough in the record to show the value of the branch in Virginia, and there is no controversy but that it remained in Virginia. I guess neither side have any care about it.

The Master: I would like to have you look into that.

Mr. Hogg: We will do that in conjunction with the Master's report.

The Master: I would not want an error made on that as a result of some inadvertence. Subject to that, I was going to inquire whether there was any serious controversy about the value I found in the other report. I think I found that the value of the Fairmount Bank is $51,200, and what I thought was that if these two items were practically agreed upon we could eliminate them.

Mr. Anderson: As to the Jeffersonville Bank, the facts as to that cannot increase the charge against Virginia, because they were like all the other banks that went up in the war.

The Master: Well, this is not a charge against Virginia, this is a charge against West Virginia.

Mr. Anderson: It will be—

The Master: I will suspend any further discussion about that until you have an opportunity to ascertain about this branch bank, and when we get to that, why, if you can agree upon the value of those two banks, that eliminates so much from my consideration, that is all. We won't bother with it any further now.

By Mr. Harrison:

Q. You say your Exhibit 2 does not show any quotations for the Bank of the Valley?

A. No, sir.

Q. Did you fail to find any quotations on that bank?

A. Yes, sir, I found no quotations for that bank.

The Master: Where was that located?

Mr. Anderson: Winchester.

Mr. Robinson: Staunton, was it not?

Mr. Anderson: And Staunton, too, I think. There were probably several branches of it.

Q. Now, Mr. Potter, taking up Class F of the supplemental answer, which embraces, as you will observe, some classes of stock beginning with the Virginia & Tennessee Railroad Company, and loans, etc., have you any exhibits relating to that, and if not, will you have one? Do you show the quotations, or have you shown the quotations?

A. The quotations are shown in this Plaintiff's Exhibit No. 2 for Virginia & Tennessee Railroad Company stock and bonds, for some of the dates; and South Side Railroad bonds are given, but we found no quotations on the stock.

Q. Virginia & Kentucky Railroad Company stock?

A. We found no quotations on Virginia & Kentucky Railroad Company stock.

Q. Did you find any on Norfolk & Petersburg Railroad Company stock?

A. No, sir, I found nothing on the Norfolk & Petersburg stock.

Q. Have you before you a copy of the mortgage deed by which the State of Virginia was secured to the extent of $4,000,000 against the Atlantic, Mississippi & Ohio Railway Company, the assignee of those stocks and loans?

A. I have such a copy, yes, sir.

The Master: That is the second mortgage that has been re-referred to?

Mr. Harrison: Yes, that is the second mortgage. And I thought it would be well to file a copy of that.

The Witness: I have not got it ready for filing.

Mr. Harrison: We will file that, marked Plaintiff's Exhibit No. 5.

Mr. Holt: I suppose it can be copied afterwards.

Mr. Harrison: Yes.

Mr. Holt: May I ask a question right there?

Mr. Harrison: Yes.

By Mr. Holt:

Q. Where do you get that, Mr. Potter, that mortgage?

A. From a manuscript copy on file in the office of the Corporation Commission, in the box there.

Q. It is one of their records, is it?

A. One of their very choice records; they would not let me take it out of the office.

Mr. Holt: I suppose none of us makes any question about those things.

The Master: Is it not a matter of record?

The Witness: I do not find it printed anywhere, it may be.

The Master: Is it not recorded in the office of the Register of Deeds?

Mr. Harrison: I suppose so.

Mr. Holt: I suppose on most of these things it is understood that the objections of both sides go to the materiality, rather than to the form.

The Master: Exactly.

Mr. Holt: Under those circumstances, we simply object to the materiality and not to the form of his evidence.

The Master: Of course, as a matter of legal evidence, this copy would not be admissible, but that point is not raised.

Mr. Harrison: If necessary, I can send for the original.

Mr. Holt: We do not want you to do that.

The Master: It is understood that you offer the original. But let us see if we have the exhibit number right. The last exhibit here is number 4. Class E will be No. 5.

Mr. Harrison: There has been an Act filed, the Act of February, 1866, under which certain bonds were issued to take up interest, a short Act. We may not file that. I think just a reference will be regarded as sufficient.

The Master: This will have to be the case in connection with that; you file that deed, and if you can stipulate among yourselves that a statement of its effect will take the place of the record, the deed will be eliminated from the record and the statement will go in its place. Now, then, the same thing will apply to this mortgage. Of course if this mortgage is made a part of this record it will have to go up with the record unless between you, you make some arrangement to put upon the record what you agree is the substance of this mortgage. Other-

wise, the whole mortgage would have to go in.

Mr. Holt: Well, that gives them the benefit of it, whether anything is ever done with it or not. I fear that there will be so much left to stipulation, and the time is so short, that we won't have time to get together and arrange the matter.

The Master: I am going to make a suggestion about that later on.

Mr. Robinson: You said "deed"; you meant "act."

The Master: I remember now, Mr. Potter said the Act was very short. We had better have an exhibit as to Class E, and that will have a number in the exhibits. I want to keep this chronological order regular. Class E, will be Exhibit 5, and the schedule for Class F, which is in process of preparation, as I understand, Mr. Harrison—

Mr. Harrison: Yes.

The Master: The schedule for Class F will be Exhibit 6, and this mortgage—

(At this point Mr. Robinson made a statement which he requested should not be made part of the record.)

The Master: I want to be sure that we get into this record all of this material in its chronological order, and by that I mean that the classes must appear one after the other. As far as I am concerned I would be very glad to have you consolidate F and G, or any other two.

Mr. Robinson: They will all be consolidated, A, B, C, D, E, F, and G.

The Master: That would take care of Classes E, F and G, which would complete the classes, and that would be your exhibits, as the case may be.

Mr. Robinson: It won't be, but it will be an exhibit.

The Master: That will maintain the chronological order all right; you will have the individual exhibits for the individual classes, and then you will have these three all grouped in one. When will that summarized schedule be ready?

Mr. Robinson: I hope to-morrow morning; they have been working on it to-day.

The Master: Now about this mortgage, the understanding is that the mortgage is in, and unless between the parties there is some stipulation that can take its place upon the record and that will correctly and succinctly state what Virginia desires and what West Virginia may also want by way of explanation, the whole mortgage would probably have to be printed in the record.

Mr. Robinson: The Act will be marked Plaintiff's Exhibit No. 5, and the Deed of Trust will be marked Plaintiff's Exhibit No. 6.

By Mr. Harrison:

Q. Now, Class G of the supplemental answer, which contains a list of securities said to have been subsequently given away, have you any quotations of the James River and Kanawha Company stock, which heads the list of those?

The Master: I want to make this suggestion before you begin that. As to Class G and the schedule appearing there, I understand that the defendants have struck out everything except the first two items, and no longer claim anything on account of the balance. So that that carries down to those two items. I am correct about that, am I not?

Mr. Holt: Yes, sir.

Q. Now, we take up this James River and Kanawha Company item under Class G. Have you any quotations of the James River stock, Mr. Potter?

A. Yes, sir.

Q. As of what dates?

A. November and December, 1860.

Q. Where are they found?

A. In the Richmond Dispatch.

By The Master:

Q. In your Exhibit 2?

A. Yes, sir, I beg your pardon, in Plaintiff's Exhibit No. 2.

By Mr. Harrison:

Q. Those quotations are contained in your Exhibit No. 2?

A. Yes, sir.

By Mr. Holt:

Q. And were obtained from the Richmond Dispatch?

A. Yes, sir, 1860, 1861 and 1863, certain dates.

By Mr. Harrison:

Q. Well, what was the quotation of the James River stock as shown on your exhibit at the nearest date to June 20th, 1863?

A. On June 16th it was 22, and on June 27th it was the same. I found no intervening quotation.

Q. Well, now, about the Manassas Gap Railroad; did you find any quotations on that, Mr. Potter?

A. I found no quotations on the stock, but the bonds were quoted in November, 1860, and April and November, 1863.

Q. Are those quotations shown on your Plaintiff's Exhibit No. 2?

A. Yes, sir.

Q. What were the quotations of those bonds?

A. The six per cent. bonds on November 2nd, there was no bid—

Q. What year?

A. 1860.

Q. What was it?

A. 65 asked, no bid. And that ran through November 9th, 16th, 23rd and 30th. On April 8th, 1863, there was bid 58, no quotation, nothing asked. On November 20th, 1863, 150 bid. I found no quotation between November 20th, 1863, and April 8th, 1863.

By The Master:

Q. Where was that quotation found?

A. Richmond Dispatch.

Q. Did it indicate it was on the Richmond Exchange?

A. Yes, sir, it so states in my Exhibit No. 2. The exchange is quoted here in every instance; or it was my intention to have

it in—some Baltimore Exchange quotations and some New York Exchange quotations.

Mr. Harrison: Now, we have not the summaries yet ready, which have already been referred to. They are being prepared, and if we get them this afternoon we will put them in. I now offer an exhibit which you can mark Plaintiff's Exhibit No. 9, which is a statement of the interest due to October 1st, 1914, upon West Virginia's share of the debt of the undivided State of Virginia unpaid and outstanding January 1st, 1861. I will say by way of explanation to our friends on the other side that this computation has been filed on one or two occasions with the briefs of counsel, but has not heretofore been introduced into the record, and I will ask Mr. Potter to say whether he made those computations and to file it as requested.

The Witness: I made the computations, yes, sir, and the stenographer has a copy.

By Mr. Harrison:

Q. You file it as requested?

A. Yes, sir.

Q. Are the computations correct, Mr. Potter?

A. Yes, sir.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 9, September 10th, 1914, C. B.

Q. Now, Mr. Potter, I will ask you a question, and it will apply to all—perhaps I have asked it with reference to each—but are the exhibits which you have filed taken from the records of the State of Virginia, and are they accurately transcribed, and the computations accurate in each instance?

A. If you consider the files of newspapers as part of the records of the State of Virginia I would say yes to all of them, and the calculations are properly made to the best of my knowledge and belief. I have checked most of them personally. I believe that they are all absolutely right.

By Mr. Holt:

Q. Now, let me ask right there, Mr. Potter, you mean by the records of Virginia, do you, the newspapers that are on file in the Library giving market quotations, and some original records and some printed reports?

A. Yes, sir, the same documents that were used by Mr. Hillman throughout.

Mr. Holt: I take it that the newspaper is a record of Virginia so far as that is concerned.

The Master: The facts are stated, and it goes for what it is worth.

Mr. Anderson: It is not the record of the State, but it is the evidence of contemporaneous history.

Mr. Harrison: We will have, as has already been stated, some additional exhibits. One other exhibit which he has not completed is computations of the interest from December, 1871, down to date on what are known as college bonds; that is to say, bonds held by the educational institutions upon which Virginia has paid six per cent. interest continuously. Mr. Potter's exhibit goes as far as 1871. We are having that computation made on those bonds because she has paid the entire interest on them, and they were never funded down to date, and is doing so to-day, and they constituted a part of the original debt. They are included in the exhibit that he has made down to 1871, but these particular bonds which were never funded, and upon which the State has continued to pay six per cent., we want an exhibit to show them.

The Master: That is a computation you are having made?

Mr. Harrison: Yes, sir. And we are having one further exhibit made showing the entire amount of the debt that Virginia has paid since January 1st, 1871, with the interest added to it on account of the ante-bellum debt, the debt of the undivided state, and as her share of it, that she has paid, that she has attempted to pay and has paid; that is altogether on account of her share.

Mr. Anderson: I have shown our friends on the other side a deed from Leland, a commissioner appointed by the Circuit Court of the City of Richmond in the foreclosure suit insti-

tuted in 1883, in which all the property of the Richmond & Alleghany Railroad Company was sold. The Richmond & Alleghany Railroad Company, your Honor will remember, as has been testified in the last day, was the successor of the James River and Kanawha Company; it purchased the property of the James River and Kanawha Company, and upon its towpath built a railroad and completed it sufficiently for operation in November, 1880. In 1883 foreclosure proceedings were instituted, the record of which I have here, the whole case to foreclose the mortgages executed by that company, one for $5,000,000 and one for $4,000,000, the proceeds of which were expended in the building of the road, the completion of the road and its equipment, and on the decree of the court in that case, that consolidated case, the road was sold by the commissioner and was purchased by a committee for $5,000,000. I do not care to encumber this record with all the proceedings of that suit, but all the substantial facts in regard to it are recited in detail in this deed from the Commissioner of the Circuit Court of the City of Richmond to this purchasing committee, conveying the property to it, and I would like to have our friends on the other side agree to a stipulation that the facts recited in that deed are in accordance with the proceedings of the court and the decree recited. It will save trouble and a good deal of expense.

Mr. Holt: That sale was confirmed, was it, General?

Mr. Anderson: As I remember, the deed was also submitted to the court and confirmed.

Mr. Holt: What was the date of the deed from the James River and Kanawha to the Richmond & Alleghany?

The Master: I think it was 1880.

Mr. Anderson: That must have been 1879 or 1880.

The Master: 1880, I think.

Mr. Holt: Now, here is a deed dated the 20th of May, 1889, from Leland, Special Commissioner, to a purchasing committee, conveying the property of the Richmond & Alleghany Railroad as a result of a foreclosure suit. In other words, after they received their deed for this property from the James River and Kanawha Company they went on and built their road and

executed a mortgage upon the road, and it was subsequently sold under that mortgage in 1889, the deed evidencing the conveyance springing out of that sale. The deed recites the history of the situation.

Mr. Anderson: Yes, it recites the salient facts of record, the suit, the decrees and all.

Mr. Holt: My suggestion is that you prepare such a stipulation embodying that.

Mr. Anderson: I will.

Mr. Holt: Then I think we can sign it.

The Master: The deed is introduced and marked and it is understood that it is to be printed in the record, subject to a stipulation between the counsel, which may eliminate the necessity of its being printed. That covers your ground?

Mr. Anderson: Yes, sir. The deed includes certain facts that we do not ask any stipulation about, but the recitals of the deed we would like to have, that are sustained by the record.

The Master: You can probably arrange a stipulation that can take care of it.

By Mr. Harrison:

Q. I will ask you, Mr. Potter, to read into the record two extracts, one from the journal entry and one from the Auditor's report, giving the dates in each instance, relating to the subsequent history after the war of the several banks of circulation that we are concerned with that are set up in Class E of the defendant's answer.

A. I find in the printed annual report of the State of Virginia for 1866, the following extract, which is a part of the annual report of the Auditor of Public Accounts for the fiscal year ending September 30th, 1866—

Mr. Holt: Those reports were printed by the State of Virginia?

Mr. Harrison: Yes, sir.

Mr. Holt: Suppose you let that go into the record for the benefit of both of us, that these printed reports were published by the State of Virginia.

Mr. Harrison: That is my understanding; I understand they were, certainly, yes.

A. (Continuing) This extract is taken from page 12 of this report referred to, and is as follows, in 1860—

Mr. Harrison: All you want the record to show is that they were official reports?

Mr. Holt: That is all.

The Master: Either printed by or under the authority of the State of Virginia.

Mr. Holt: Let it go right into the record, please.

A. (Continuing) "In 1860 there were 66 banks and branches in the state with a capital of $15,520,550 and a circulation of $12,000,000. Of these, 20 were located in West Virginia with a capital of $3,468,800. The residue, 46, were in this state with a capital of $11,631,900. The amount of dividends and bonus paid into the treasury by these banks in 1860 was $368,853.43. Such of them as are located in this state have been ruined by circumstances over which they had no control. Their stocks are worthless and their circulation selling in your streets at from 10 to 30 cents on the dollar. The state own of the stock of these banks, estimating the value per share at par, $3,760,020." Further extract is found further on in the—

Mr. Holt: What was the statement there about their circulation selling for 10 cents on the dollar.

The Witness: "Their stocks, etc., are worthless and their circulation selling in your streets at from 10 to 30 cents on the dollar."

Mr. Holt: What is the difference between circulation and the stocks, Mr. Harrison?

Mr. Harrison: Circulation is notes, notes issued by the bank.

Mr. Holt: In other words, that is a statement that the stock is of no account at all and the circulation is 10 cents on the dollar?

The Master: The banks' notes were only worth 10 to 30 cents on the dollar.

A. (Continuing) "State securities were selling in 1860 at

par or at a price very nearly approximating it. They are selling now at only 40 cents on the dollar. Thus 60 per cent. of the value of your stocks and bonds, held principally by your own citizens, have been destroyed by the fortunies of war."

Q. Now read the other entry.

A. The other entry referred to is a journal entry found in Journal D, I have not the page before me, but the date is September 30th, 1872. By this journal entry the accounts carrying the cost of the bank stock held by the Board of Public Works were closed, the entry reading as follows: "To balance latter accounts, some having been lost at the close of the war in 1865."

Mr. Holt: What journal entry is that?

The Witness: That is in the Internal Improvement journal.

Mr. Holt: What office?

The Witness: In the Second Auditor's office, Internal Improvement Fund, Journal D, September 30th, 1872.

Mr. Harrison: Now, on that point I would like to inquire, Judge, whether it will be agreeable to you gentlemen to enter into the stipulation that was handed to you yesterday, before we shall proceed further with testimony on this line.

Mr. Holt: We will give you an answer on that in the morning, and so far as we are concerned I think we will probably say yes. The only difficulty in my mind was this, that the Master seemed to think he would prefer something more.

Mr. Harrison: The only thing we are concerned with is the stock and this Auditor's report. This report that we found showed that even the notes of the bank had no value.

Mr. Holt: As I understand, it amounts to this, that through the fortunes of war by 1865 or 1866 the stocks owned by the State of Virginia in these various banks had become worthless.

Mr. Harrison: Yes.

Mr. Holt: We will see what we can do in the morning.

The Master: My suggestion was this, that the mere fact the stock became worthless was not necessarily a full demonstration of the financial condition of the banks. Of course, if this statement, if it is evidence, that the circulation was sell-

ing on the street from 10 to 30 cents on the dollar, why that has some tendency to go further, and if it is true, which up to date I have not seen proved in this case, that the circulation was a prior charge upon the assets and preceded liability to the depositors, that of course is another salient fact; but these things have all been suggested here this afternoon, and the case was entirely barren of them until now. What I think would be more satisfactory, if there are decrees of court liquidating these various banks, would be a concrete statement of exactly what those decrees show. If this testimony is of any value at all, it would be very much more satisfactory to me than these general statements, and so far as I am concerned, if it is relied upon by either side and the decrees are available, I would like to have stated in this record a concise summary of just what those decrees show. It can be done in a paragraph in the case of each bank.

Mr. Harrison: I think the difficulty is that the decrees which you speak of are really not available.

The Master: That is another thing.

Mr. Harrison: Mr. Conrad did suggest that some litigation had been had over two or three of them in the Federal Courts in Richmond. We examined there yesterday and conferred with the clerk about it and could not find it. As far as he could see, he could not find any record of the proceedings in the Federal Court over 50 years ago relating to any of those banks at all. He did not know where the papers had gone or whether he had overlooked it in tracing it down, but he could not find it.

Mr. Anderson: That clerk's office has been moved once or twice.

The Master: Would they be naturally wound up in the Federal Court?

Mr. Anderson: Yes, sir, they were.

The Master: It seems to me if they were State banks, unless they had foreign creditors—

Mr. Harrison: Litigation arose over them in the State courts; that is, individual suits where somebody who owed the bank would be sued.

The Master: My suggestion is this, isn't it true that when you come to the liquidation of a state institution, the state tribunal is the tribunal that would liquidate it?

Mr. Harrison: I will have some further evidence on that.

The Master: I was given to understand that these decrees were in existence. If they are not in existence, that is of course another thing.

Mr. Harrison: They may be perhaps; They must be in some repository somewhere, but it would take a good deal of time to hunt around and find them.

Mr. Holt: Won't it be true that you will find the individual suits, against individuals, I mean, where they undertook to offset notes of the bank, were in the Federal court, and that the liquidating suit was in the State court?

The Master: But that does not necessarily determine the condition of the bank, a suit between individuals.

Mr. Holt: That is the reason, I mean, why they cannot find any decrees or litigation in the Federal Court.

The Master: It seems to me a little incongruous that you should have a decree liquidating a State bank found in the Federal Court.

Mr. Anderson: The suits must have been brought by non-residents, that is all.

The Master: Even then, of course, I have not examined it, but it strikes me as incongruous. Suppose you have the records in your State courts run down. It cannot be a great job, because the clerk's index of the various actions during the period of ten years will show it.

Mr. Anderson: My recollection is perfectly distinct, it was just after the war, that such suits were pending in the Federal courts here.

The Master: What I would like is this. Of course I cannot anticipate in advance what weight may be given to this or what weight I might feel like giving to it; but when I come to think it over, I would like to have all of the available facts that are in existence that tend to demonstrate the financial condition of those banks as near to 1861 and 1863 as is feasi-

ble. I do not know what weight I may give it; I may not give it any, so far as that goes. Of course there are a good many complications that are involved in this case, and of course the counsel will go into that on their argument. It is possible that I may decide that this evidence is entitled to weight; now if it is, I want all the evidence there is on the point.

Mr. Harrison: I do not know whether I will be able or not, or any of us will be able, to find the decrees. I would not really know what court to go to, to look for them.

The Master: Of course you will do the best you can; that is all.

Mr. Harrison: I will put into the record something that bears on the question. I want to put into the record the Act of February 12th, 1866. That Act required the banks of the Commonwealth to go into liquidation. The object that the Legislature had in mind was to take care as far as possible of the interest of the parties interested, by prescribing a method for going into liquidation at once; they were staggering along, and it required them to go into liquidation, and they made assignments immediately, and I think assignments are dated the same date, of two of the banks, that the Act is dated. I will put that Act in. Now several suits originated, and there were various questions that arose naturally in a complicated state of affairs such as were involved in those banks, and the case went to the Court of Appeals in the two suits, Exchange Bank of Virginia, for Camp, Trustee, against Knox; and Farmers' Bank of Virginia, for Goddin, etc., against Anderson & Company. The two suits were heard together, as they involved the same questions, and the Act of the Legislature was construed that required them to go into liquidation, and the real object of those suits, the question involved was the right of a debtor of the bank to offset the bank's circulation against his liability to the bank. The debtor owed the bank. The receivers of the bank sued the debtor. He tendered as an offset the notes of the bank. And in discussing those questions—and that was refused, he did not succeed—the court said:

"The sole question, therefore, presented in these two rec-

ords is, whether or not, these depreciated bank notes thus acquired, can be set off against the demands of the plaintiffs, suing for the use of the trustees of the creditors of the banks. It is to this question that I shall confine my opinion."

The Master: You mean the deed of trust, which was the beginning of the liquidation proceedings?

Mr. Harrison: That is right, it began with a deed of assignment to the trustees. The court further said:

"The close of the late civil war found all the banks of circulation in the State in a condition of hopeless insolvency. They were compelled to suspend business, and there was scarcely a remote possibility of a resumption. In this state of things, forced upon them by the calamities of war, nothing remained for them but to go at once into a course of liquidation, and to distribute among their creditors such remnants of their assets as might yet be realized.

"In this condition of things, and to effectuate this object upon equitable terms, the general assembly passed the act of the 12th of February, 1866, entitled an act requiring the banks of the Commonwealth to go into liquidation.

"The purpose of that act was to provide regulations, by which, as recited in the preamble, 'a speedy settlement of the affairs of said banks should be made, in order to a legal and proper distribution of their assets amongst all persons entitled to share in such distribution.'"

The court decided there that the debtor of the bank that acquired the notes of a bank after assignment for the purpose of liquidation could not offset them against his liability to the bank.

The Master: That is what volume?

Mr. Harrison: That in Volume XIX of Grattan's Reports, page 739.

The same question arose two or three years later in the case of the Bank of the Valley. The trustees under the general deed of assignment made by the Bank of the Valley sued a

debtor of the bank, and that debtor sought to offset against that liability notes of the bank which he had acquired after the date of the assignment. And there the same questions arose, and the court said:

"The act of the general assembly, passed February 12th, 1866, requiring the banks of the Commonwealth to go into liquidation, was the subject of judicial construction and interpretation by this court in the case of 'Exchange Bank v. Knox,' and 'Farmers' Bank v. Anderson,' 19th Gratt., 739; which cases were afterwards reaffirmed in 'Saunders v. White,' 20 Gratt., 327. By these decisions it was held—

"1. That the act forbids and prevents all preferences among the creditors of the bank.

"2. That a debtor of the bank cannot set off notes of the bank bought up by the debtor after the execution and recording of the deed and notice thereof to the debtor.

"3. The banks being utterly insolvent, the trustees are the trustees of the creditors, not of the banks, and are purchasers and assignees for value of all the property and effects of the banks for the benefit of the creditors.

"4. Though the charters of the banks require them to take these notes in payment of debts due to them, this does not authorize debtors of the bank to pay their debts in the notes of the bank, bought up after the execution and recording of the deeds conveying their assets to trustees for the benefit of their creditors, because the debts are no longer due to the bank, but to the creditors of the bank.

"These principles must govern the case now before us."

The court goes on, and in the body of the opinion it appears that there had been litigation in the Federal Court here in Richmond, and it seems that the Virginia Court of Appeals did not follow the ruling of Judge Underwood, who had ruled that they could offset those notes against the debts due to the bank.

"At that term the defendant tendered a plea in the following words: 'The defendant for further plea states, that pursuant to a decree and order of the Circuit Court of the United States, made in the cause of the Merchants Bank of Baltimore v. The Bank of the Valley of Va. et al., in which case the said Fant was appointed receiver, dated day of September, 1869, herewith exhibited, he, the said defendant Marshall, did heretofore, to wit, on the day of , 1870, offer to pay the whole sum with interest and costs claimed in the plaintiff's declaration in circulating notes (commonly called bank notes) issued theretofore, and put in circulation by the said nominal plaintiff to the said Fant as receiver; which offer was by said Fant refused, saying that he would not receive said circulation; and said defendant brings said money in court with this plea, and has already filed the same with his plea of set-off. Wherefore he says, that he has fully tendered the whole sum claimed by the plaintiff in a currency which he was bound by said decree to take in payment; and this he is ready to verify,' &c., &c."

Showing that the Federal Court here had authorized that to be done. I do not care to go on and read this, except it says this:

"Conceding that the order of Judge Underwood was imperative on his receiver, yet when the judgment of the Circuit Court of Frederick (that is where Winchester is located) was entered (July term, 1872), this order of Judge Underwood had been rescinded by Judge Bond (the Circuit Judge of the United States), who followed the decision of the Supreme Court of this State, which had declared that a debt due to the bank could not be paid in the depreciated notes of the bank, acquired after notice of the assignment of the assets of the bank."

Mr. Hogg: What is that case?

Mr. Harrison: Bank of the Valley against Marshall, 25 Grattan, 378. Those decisions, taken in connection with the

Act of the Legislature and the records here in the Capitol, it seems to us show conclusively—

The Master: You say here in the Capitol?

Mr. Harrison: The extract from the journal and the extract from the Auditor's report—show that the stock itself, whatever may be said of the circulation of the bank, was absolutely worthless.

The Master: This is a proposition that the counsel for Virginia are interested in more than anybody else in this case. These opinions show that the banks were insolvent, but that is all they do show; they do not show to what extent, they do not show how small the assets were, and there is not a word in them that would authorize me to find how small the assets were or what the remnants were. If this is entitled to weight on this proposition, the fact that they were simply insolvent and that the stock was not worth anything is of course one thing. The extent to which they are insolvent is a very much longer step, as tending to show what their condition may have been at a preceding date. I am telling you how this lies in my mind. But there is not a word in this record or in these opinions that gives me the information, beyond the fact that they were insolvent. They may have been worth ten cents on the dollar. The stock might have been worth par or nothing five years after that time. Just exactly how much this evidence of the condition of these things after certain dates is going to be worth, of course I cannot tell. I am going to explain this somewhat the way it lies in my mind, so that you can appreciate the situation. Here is 1863 and 1861. 1861 is a time of peace. And nothing has appeared here in this record to show that there are any financial disturbances or conditions that would adversely affect any industry or enterprise in Virginia. I am stating simply what this record shows. I do not understand that there is any controversy about that, January, 1st, 1861. Now, June 20th, 1863, of course is another proposition, but both of these dates are involved here. Now, I say that if testimony showing the condition of the bank in 1866, as bearing on its value in 1861, is to have value, a good deal depends upon the financial condition of that bank in 1866. If it was

simply insolvent and its stock worth nothing, why that might be one thing. If it could pay five cents on the dollar to any of its creditors, it might be quite a different thing, and be very much more probative in its character as to 1861. And the same is true as to 1863. Now, do I make this plain? The mere fact that the stock was not worth anything in 1866, may or may not demonstrate that it was not worth anything on January 1, 1861, and it may not go a great ways towards it. On the other hand, if the bank was entirely devoid of assets in 1866, it may go a good deal farther towards showing that its stock was not of much value January 1st, 1861, and the same of June 20th, 1863. Now, do I make that plain?

Mr. Holt: Yes.

The Master: That is all there is to it. Now, my suggestion is simply this, of course I am discussing this a great deal more than I would in an ordinary litigation—this is not a question of catching anybody in a trap. When I get around to this, I want to get this in accordance with what the facts are, and as I say, I cannot tell—here are a great many conditions; I suppose it will be contended that intervening January 1st, 1861, and 1866, a good many things did happen.

Mr. Anderson: I do not think there is much controversy about the value in 1861; it certainly had value in 1861.

The Master: I do not know what you are going to contend.

Mr. Anderson: We have proved it; both sides have put in evidence on that.

The Master: Then you come to June 20th, 1863; a good many things happened after June 20th, 1863, before 1866. The battle of Gettysburg was fought in July, 1863, and up to the date of the battle of Gettysburg a decently satisfactory condition of hope of success existed in the part of the country where we now happen to be, up to July, 1863. The people down here did not consider the situation hopeless up to that time. Now, a good many things happened after June 20th, 1863. Well, among other things, this stock turned out to be worthless. Suppose evidence was introduced to satisfy me that after June 20th these banks did not have anything of any value. The fact that their stock turned out to be worthless in 1866 is an-

other thing. I am simply illustrating this, because I have got to pass on all these things. I do not know as I have any title perhaps to give my notions about this at this stage of it, but I want to get at these facts. It seems to me too obvious for discussion, that if the fact that these banks were utterly worthless—I will put it as strong as that, but that does not appear here, and there is nothing that will justify me in finding that—the utterly worthless character of this stock in 1866 and the utterly worthless character of the bank itself in 1866 are quite different things. The stock might not be worth a dollar, and there might have been money enough realized out of these assets of those banks to pay all its deposits and its full circulation and every creditor, and leave the stockholders without a cent. So far as the stock is concerned, the bank might have had assets on hand and been in a sense absolutely insolvent. Now, the point is, if this condition in 1866 is going to have weight, to be taken into account as a factor, in my judgment it is important to get as near as you can to the exact condition. Now, do I make that clear?

Mr. Harrison: That is what we have been trying to do.

The Master: When we get around to this, I am not going to suggest what West Virginia is going to argue, but I know what they are going to argue, and of course you know what they are going to argue; there will be a contention here that there was such a profound change between June 20th, 1863, and 1866, that the evidence that you offer in connection with 1866 is entirely worthless and should not be taken into account. That is what West Virginia is going to argue. Suppose that does not impress me as fully as they expect to impress me with it. Then I come down to the question whether there was anything in this bank in 1866. Now, 1866 is nearer 1863 than it is 1861. Of course they may say that somebody stole it in 1865, for instance, or 1864. Well, if they satisfy me, or if it appeared that these banks had full treasuries in 1864 or 1865, and either the Federal Army or the Confederate Army took it, that does not affect the value of the stock in January, 1863, if it was on hand at that time. Take the naked proposition of the financial condition of the bank itself, and if I reach

the conclusion that the condition in 1866 is entitled to weight as tending to show what the condition was on June 20th, 1863, it is of importance for me to know.

Mr. Harrison: We will see if we cannot get them.

The Master: I am not arguing this case, but I can come pretty near repeating the arguments on both sides before they are made. I am not trying this case on one side or the other, but I want everything from every point of view. I want it here so that when I come to decide later I will have as much foundation as possible. I had a lot of trouble before on account of the extremely barren condition of the testimony on some subjects. This is no criticism on the counsel, because the counsel did the best they could. If they cannot get it, of course they cannot produce it, and I cannot have it. But so far as you can get it, I want it. I hope I have not elaborated that too much.

Mr. Harrison: I understand your Honor, and if we can get it we certainly will do it.

The Master: I hope West Virginia does not feel that I have unduly interfered at this time in the trial of the case.

Mr. Lilly: It is all right, sir.

The Master: You are expected to argue this fully, notwithstanding that I have intimated that I can state the argument.

Mr. Harrison: I do not think that we will be able to put the balance of those exhibits in.

The Master: Why can't they cross-examine Mr. Potter as to Exhibit 1?

Mr. Harrison: They may go ahead. Can you do that, Judge Holt?

Mr. Holt: Our difficulty is that we have had no opportunity to go over these exhibits with our accountant. We will be very brief, though, when we do start.

The Master: We have an hour and a half. If you say you want the time, I will give it to you; I understand the practical conditions, but what I want to do is to make as much progress as we can; and of course if you feel, Judge, that under the circumstances you can make as much progress by suspending until morning, unless you are prepared to go on with

something else—have you anything else, Mr. Harrison, you can take up the time with? Of course, it must be understood that if this case goes in a little criss-cross, like a Virginia rail fence, while it is going in, it will come out all right. I simply want to use up all the time.

Mr. Harrison: We have some exhibits to put in, but it won't take but a moment to do it.

The Master: I will suspend here for five minutes, and in the meanwhile you may confer.

Mr. Holt: May I ask what will be the residue of their evidence? I would like to have some outline of it.

The Master: I will suspend for five minutes; in the meantime Mr. Harrison will get ready with such additional exhibits as they have. And they propose, Mr. Harrison, to take up after a short recess the inquiry as to what you may have in addition to these schedules.

Mr. Harrison: The witness offers as a further exhibit the photographic copies of the balance sheet, etc., of the banks that have been used in the testimony of the defendant's witness, Mr. Hillman.

The photograph's were admitted in evidence and marked Plaintiff's Exhibits Nos. 10, 11, 12, 13, 14 and 15, respectively, September 10th, 1914, C. B.

The Master: Judge Holt, you feel under the circumstances that you would prefer to suspend the cross-examination of Mr. Potter until morning?

Mr. Holt: I would prefer it, your Honor. And I really believe we would lose nothing by it.

The Master: I believe that is a reasonable suggestion, taking everything into account. In the meanwhile, if the counsel for Virginia can make any progress, they have some few schedules that they can put in, and if in addition to that they have anything else they can do I would be glad to have them do it. If it is agreeable to the counsel for Virginia, Judge Holt would like to have the counsel for Virginia indicate what they have in addition to the testimony of Mr. Potter and the general sub-

jects to which it relates, so that we can get some judgment as to how much time you may require.

Mr. Harrison: I think we could wind up in an hour if we were prepared this afternoon.

Mr. Holt: Then when you complete the schedules and Mr. Potter's examination and Mr. Williams' examination, you are ready to rest?

Mr. Harrison: Yes, the schedules and Mr. Potter and Mr. Williams, and we are trying to get one or two other gentlemen—we would not need any if we could make the stipulation.

The Master: What is that, as to the Confederate money?

Mr. Harrison: Yes.

Mr. Holt: We have not considered the Confederate money stipulation, only the banks.

The Master: We will suspend here, so that the cross-examination of Mr. Potter can begin to-morrow morning. How would half-past nine do, Judge?

Mr. Holt: That would suit me.

The Master: If the plaintiff's are ready to-morrow morning to complete the examination of Mr. Potter with these summarized exhibits, of course they will complete it, and immediately on its completion I expect that Judge Holt will be prepared to go on with his cross-examination. And then your two other witnesses, and then subject to odds and ends the case is practically closed. I am right about that, am I, Mr. Harrison?

Mr. Harrison: Yes.

The Master: I want to congratulate counsel on both sides on the fact that we have made great progress to-day. Meanwhile, it is understood that Mr. Hillman of course has all of the data that has been submitted, so that he and his assistants can check up everything, so that when we get through I want to get the same statement in the record with reference to Virginia's compilations that I have now with reference to West Virginia's. And that cleans up everything with respect to computations.

Adjourned to September 11th, 1914, at 9:30 A. M.

BEFORE THE MASTER.

Richmond, Va., September 11, 1914.

Present, the same counsel as on yesterday.

CONWAY W. HILLMAN, recalled for further examination, testified as follows:

By the Master:

Q. I call your attention now, Mr. Hillman, to the memorandum you submitted in response to my request that you make further investigation in connection with the Richmond, Fredericksburg & Potomac Railroad, and I would simply like to have you supplement the statement you have given by giving to me the amount which appears carried as the cost of the road on September 30, 1848, 1849, 1855 and 1858. Just add those.

A. Yes.

Q. I want the gross amount that they carry in their annual statements under the cost of road, which was carried as $1,531.000.

A. Yes, sir.

Q. Just duplicate that item.

A. Yes, sir.

Q. These items that you refer to as extraordinary expenses in 1858 and 1859 and 1860 and 1861, those do not appear to be charged in or connected with the main item of cost of construction, but appear in other items of cost involved in the balance sheet, as I understand it.

A. They are included in operating expenses classed as extraordinary expenses.

The Master: That covers it all as far as I am concerned. Have you your schedules this morning?

Mr. Robinson: We were at work pretty nearly all night, but Mr. Harrison has not seen them yet, we have some of them.

The Master: Then let Mr. Holt go right along with the cross-examination of Mr. Potter on the schedules that are now in. You are ready to proceed with the cross-examination, are you not, Judge Holt?

Mr. Holt: Yes, sir.

The Master: Just as soon as Mr. Harrison comes in we will

proceed with the cross-examination. I give both sides notice now that I am not going to wait the hearing for the accountants to get together and do any checking up that may be necessary in order to verify. I want it all checked up and verified, but I am not going to wait the hearing for that purpose.

The Master: Mr. Harrison, before you came in I called Mr. Hillman's attention to this memorandum that was submitted to me in connection with the Richmond, Fredericksburg & Potomac Railroad Company, and suggested to him that in addition to what is on that I wanted him to give to me the item of cost of road and property, etc., that appeared for the years 1848, 1849, 1855 and 1858; and then he testified on my examination that the item referred to as extraordinary expenses, to which he has called attention, was charged in to operating expenses and made no part of this item of the cost of construction. I did that while I was waiting for you. I want to make this suggestion on the record, and then I want Mr. Holt to proceed with the cross-examination of Mr. Potter. There has been some discussion as to the circumstances under which this $1,000,000 loan of one of the roads was paid in part, the contention being on one side that there was no authority in law for the payment. As far as I know there is nothing yet in this record which would enable me to reach a conclusion upon that legal proposition. I know what the contention is, but so far as I remember my attention has not been called, except by oral statements, to any statute from which I can reach the conclusion as to whether or not that payment was or was not authorized and therefore binding. I simply call attention to that so that if it has been omitted and you want it in you may put it in. Now, Judge Holt, you may proceed with the cross-examination. You may have it in, but if you have, it has escaped my attention.

Mr. Holt: The idea was, as I recall, that the officer who received this payment had no authority to receive it.

The Master: I do not know of anything in the record that establishes that fact.

Mr. Harrison: Except the entries in the journal, the minutes of the Board of Public Works and the Sinking Fund.

The Master: That is simply a declaration of the Board of Public Works and involves their construction of what the law was. Of course if you want to rest on that, with that suggestion, that leaves the case in that position. I do not know of anything in this record that would enable me as an original propo-

sition to determine whether or not that payment was authorized. I simply call attention to it now here so that if there is any defect in it, then the defect may be remedied. Now, you may proceed, Judge Holt.

Mr. Holt: I will be very brief.

Mr. Robinson: If your Honor please, in our Exhibit No. 1, Mr. Harrison asked a question of Mr. Potter whether this cash interest paid by Virginia from January 1, 1861, to December 31, 1871, represented entirely and exclusively interest upon the debt as it existed January 1, 1861, and Mr. Potter answered that it did not exclusively represent interest on that debt. That was a surprise to Mr. Harrison and to myself. We had supposed that it did, and learned for the first time that between 1861 and 1871 there was about a million dollars of bonds issued in payment of work that had been contracted for prior to January 1, 1861, so that to that extent we have overlooked in our case as originally tried about a million dollars of the common debt. We are not making any point of that now, but what I wish to state is that we will correct this schedule in that regard and hand it in as soon as we can. We cannot do it to-day. It is one of the things which is a surprise that has come at the last minute, but what we want this schedule to show is the interest on the undivided debt paid by Virgnia down to December 31, 1871, the time of her first refunding act.

The Master: That may go as the statement of the witness if it is agreeable to Mr. Holt, by way of additional explanation to Exhibit No. 1, Class A.

Mr. Harrison: It explains his former answer.

The Master: Is there any objection to that being treated as a statement of Mr. Potter in explanation?

Mr. Holt: How is that, Mr. Potter?

Mr. Potter: That is the fact.

Mr. Anderson: If your Honor please, in regard to that matter, the fact that Virginia had issued nearly a million dollars of bonds in settlement of antecedent obligations of the State, that is obligations contracted before January 1, 1861, was well known to me and I think to the other counsel for Virginia during the former hearing. We did not set up those claims because by the compact between the two States evidenced by the provision in the constitution of West Virgina, Section 8 of Article 8 of the Constitution of West Virginia, and the Act of Assembly of Vir-

ginia, according to the provisions of that Constitution we thought we could not set up any portion of the debt contracted before 1861, this was really contracted before 1861, but evidenced by bonds. We did not set this up because there were intermediate contributions by West Virginia to the treasury of Virginia against which we thought this would be a fair set off, and it will be found that it sets off everything that West Virginia could possibly have paid between 1861 and 1863.

The Master: Now, Mr. Holt, you may proceed with your cross-examination.

Continuation of the examination of

ARTHUR G. POTTER.

Cross Examination by Mr. Holt:

Q. Mr. Potter, I believe you stated on yesterday that you were the accountant in this case upon its former trial. Did you mean that that you were the accountant appointed by the Court or that you represented only the State of Virginia?

Mr. Harrison: I said representing the State of Virginia, as far as I remember; if I did not, I intended to say so.

The Master: There is no question about that fact.

A. I represented the State of Virginia.

Q. Turning now to your Exhibit No. 1, which relates to the Sinking Fund, I believe that you stated on yesterday in response to a question by Mr. Harrison, that the balance in that fund on January 1, 1861, as given by you at $819,250.03, tallies with the Defendant's Exhibit No. 1?

A. Yes, sir.

Q. And that the amount to the credit of that fund on June 20th, 1863, of $143,195.90, tallies with Defendant's Exhibit No. 1, 1863?

A. Yes, sir.

Q. So there is no disagreement there?

A. No, sir.

Q. I note that you have an item under the head of Sinking Fund, disbursements, January 1, 1861, to December 31, 1871, of $443,300.

A. Yes, sir.

Q. And that you do not carry it out in your computation for

the reason that, according to your contention, it was refunded, is that true?

A. I would not go so far as to say that it was refunded; a tender was made of it according to the entries on the books.

Q. That was a part of a payment, was it not, of $886,685, made by the Virginia & Tennessee Railroad Company on the million dollar mortgage?

A. Yes, sir.

Q. What part of that $886,685, if any, was permitted to remain in the Sinking Fund?

A. Judging from these figures, found in the cash book of the Sinking Fund I should say it would be the difference, $443,385.

By the Master:

Q. And what sum?

A. What is that?

Q. The difference between $443,000—

A. No, sir; the difference between $443,300 and $886,685, or $443,385.

Q. Just one-half?

A. One-half with the $85 off.

By Mr. Holt:

Q. That amount then was permitted to remain in the Sinking Fund?

A. That is the only conclusion I can arrive at from the entries on the books.

Q. And so far as the balance of eight hundred and eighty-six thousand and some dollars is concerned, namely $443,300, was it not simply transferred to the Commonwealth Fund and not refunded?

A. I cannot say as to that. I can give you the exact wording of the entry covering that transfer if you wish it.

The Master: When you say refunded, Judge, I suppose you mean returned?

Mr. Holt: Yes, returned.

The Master: I suppose the use of the term refunded arises from the fact that it is used in the entry. But we all understand it was returned by the parties who made the alleged illegal payment.

Mr. Holt: Yes.

The Master: Proceed.

Q. You say you have that entry before you?

A. Yes, sir.

Q. What is it, Cash Book B of the Sinking Fund, March 27, 1863?

A. Yes, sir.

Q. What does that entry show?

A. On the credit side of the Cash Book, by Commonwealth of Virginia, by order of Commissioners of Sinking Fund, it being one-half of the amount paid by Virginia & Tennessee Railroad which said Commissioners refused to receive, which now has to await further legislation, $443,300.

Q. Which has to await future legislation, is it not?

A. I beg your pardon, it is future.

Q. Have you another entry upon the Auditor's Day Book, 1861-65, page 309, before you?

A. No, sir; I have not that entry.

The Master: Can you send for that book. Would you like to have it, Judge?

Mr. Holt: I have a memorandum of it.

The Master: You may be able to read it right in from that memorandum of it.

Mr. Holt: I would like to have it if we can get it in just a moment.

The Master: Send for it, Mr. Potter. I would suggest if you have there a memorandum showing what than entry is, why can't you put it in by asking him if such an entry does not exist. If they do not make any point about it that will answer the purpose as far as I am concerned.

Mr. Holt: I will.

Q. I will ask you if there is not an entry on the First Auditor's Day Book, 1861-1865, page 309, under date of March 27, 1865, reading as follows: To the Commissioners of the Sinking Fund, from said fund on account of money transferred to the Commonwealth by the Commissioners, $443,300.

A. I do not know, I have not seen such an entry.

Mr. Holt: We will have that brought in.

The Master: You can proceed and take that up later, can you, Judge?

Mr. Holt: Yes.

(At this point the book was produced.)

Q. Have you found the entry that I have just refered to?

A. Yes, sir.

Q. Read it.

A. J. S. Calvert, debit to sundry accounts. Under that heading, to the Commissioners of the Sinking Fund from said fund on account of money transferred to the Commonwealth by the Commissioners, $443,300.

Q. Give the page on which you find it?

A. Page, 309.

By Mr. Anderson:

Q. What is the date?

A. February 28, 1865.

By the Master:

Q. What is the book?

By Mr. Holt:

Q. Is it under of February 27, 1865?

A. March 31st.

By the Master:

Q. What year?

A. 1865.

By Mr. Holt:

Q. My reference is to March 27th.

A. There is a 27 there. I do not know whether that means—I think that means the 27th of the month. The whole entry is dated March 31st. I believe that is the entry for the whole month, and this 27 means the 27th of the month.

By the Master:

Q. Then just say that that entry is dated March 27th.

A. Yes, sir; that entry is dated March 27th, and appears on page 309 of the Day Book, Auditor's Office of Virginia, 1861-1865.

By Mr. Holt:

Q. Then, according to that entry, Mr. Potter, that $443,300 was not returned but was simply transferred from the Sinking Fund to the Commonwealth?

A. This would indicate that it was paid to the Treasurer of the Commonwealth, yes, sir.

By the Master:

Q. That is, from one fund to the other? The point that Judge Holt has in mind is that there is nothing on these entries that shows that anything representing this payment was returned to the parties who originally paid it.

A. Not that this entry shows.

Q. You do not have anything on the books that shows it?

A. No, sir.

Q. You do not find anything on the books that shows that any of the consideration that is alleged to have been received on account of this fund was returned to the parties who originally paid the same?

A. Not on this book, no, sir.

By Mr. Holt:

Q. Now, you have upon Exhibit No. 1, Mr. Potter, an aggregate item of interest paid on the State debt between June 20, 1863, and April 1, 1865, of $1,503,957.88; is that correct?

A. Yes, sir.

Q. The object of your exhibit then as I understand is to show that Virginia paid in the shape of interest upon the undivided debt between those dates that amount?

A. Yes, sir.

Q. And you claim that for her?

A. Yes, sir.

Q. This exhibit does not reduce the $1,503,957.88 to the gold standard, does it?

A. No, sir.

Q. Where in this and your other exhibits when a settlement was made by the turning over of any assets owned by the State of Virginia in which West Virginia claims 23½ per cent., you do reduce it to the gold basis, do you not?

A. Yes, sir.

Q. Through all your exhibits?

A. Yes, sir; where cash is involved.

Q. That is, wherever any stocks in which West Virginia claims an equity have been utilized in the cancellation of any part of the undivided debt you reduce the matter to a gold basis?

A. I do not want to evade the question, but I want to be accurate about it. We reduced the cash to a gold basis and the stocks to a market basis; if you refer to that as a gold basis, my answer would be yes.

Q. Why, now, when West Virginia uses bonds in the payment of any portion of the principal or interest of the undivided debt do you give her the full benefit at par of those bonds, but on the other hand when a bond is cancelled or redeemed by any asset, in order to cut down West Virginia's credits, do you reduce that transaction to a gold basis?

A. I believe that the value of the investments sold by Virginia is more nearly shown by what Virginia got for it at the market value of the bonds than it is by the par value.

By the Master:

Q. That is not quite the question. The question is why you have used the gold basis in one factor of the equasion and do not use it in the other.

A. I did not understand his question that way.

Q. And whether it relates to any item except this $1,503,957.88 or not, I do not know, because that is the only one that has been developed. The suggestion that Judge Holt's question conveys to my mind is that when you are minimizing the charge to Virginia in the interests of Virginia and to minimize the amount due to West Virginia, you reduce the various factors to a gold basis so far as cash is concerned, but, upon the other side of the account, when you are crediting Virginia with the disbursements you have not reduced that to a gold basis, and he wants to know why if you did it in the one case you did not do it in the other.

A. My answer to that is Virginia is not makng any claim here. West Virginia is making the claim. I have been instructed to try to arrive at a fair valuation, and I have attempted to do that to the best of my ability. This calculation is merely operations of the sinking fund for a series of years. There is no reduction and no addition made to this schedule.

Q. Do you mean by that as far as this schedule goes this is rather illustrative than probative?

A. If I understand your question, yes, sir.

Mr. Robinson: Isn't your question a question addressed to counsel more than to the accountant?

The Master: I think it is a proper question for the accountant.

Yes, I think it is all quite true, but I allowed that method of inquiry on the part of Virginia, and I think it is legitimate as far as Mr. Potter is concerned. He is a qualified accountant. This is exactly the same line of inquiry that was pursued with Mr. Hillman; that is, in substance. Of course in the last analysis both of you understand that I am going to be governed by the contentions, that is so far as the attitude of the various parties are concerned, by the attitude asserted by their counsel. I do not say I am going to take the assertions of the counsel, but I am going to hold them to the theories which their counsel stand for in final argument.

Mr. Holt: Of course these exhibits from first to last show that wherever we set up a credit they minimize it by a reduction to the gold basis, where, on the other hand, they want to show how glorious has been the conduct of Virginia, they do not reduce it to the gold basis.

The Master: Of course the purpose of this cross-examination is to emphasize that fact.

Mr. Holt: And I wanted to know what reason there was for it, if any.

The Master: You have a perfect right to it, and as I understand, Mr. Potter has done the best he could to give the reasons from his point of view. There is no question about the propriety of the cross-examination.

Mr. Harrison: In response to the comment made by my friend on the other side, which of course embodied a veiled criticism of the motives and integrity of Virginia—

The Master: I do not think so; it does not convey any such idea to my mind. It is quite proper for both sides of this controversy to put their best foot forward, and make the best and most satisfactory showing that they can. I do not think there is a thing in this objection, Mr. Harrison, that reflects upon the sincerity or integrity of either Virginia or its accountant.

Mr. Harrison: I want to call your Honor's attention to what this exhibit means. I apprehend the witness has not conveyed that idea yet clearly to your Honor's mind, in respect to the item of interest under criticism, the aggregate amount being $1,503,957.88 I merely want to say that that column headed Interest on State debt, including the item that has been criticized shows that so much of the State's public obligation had been discharged. In other words, that a total of $4,086,136.27 of the obligation of the

State to pay interest, whether it was paid in chips or whet-stones, or not, it was paid in a currency that was accepted by the creditor, and discharged that much liability. And that was all that column was intended to show, and all that it does show.

The Master: I understand that.

Mr. Harrison: That there had been lifted between those dates, the dates mentioned here, at the particular date that Judge Holt refers to, there had been lifted one million nine hundred thousand dollars of interest that had accrued on the undivided debt, and no longer rested as an obligation.

The Master: It bears more upon this question of interest, and at the same time of course, so far as Judge Holt's criticism may be founded upon the record, he is entitled to make it.

Mr. Harrison: I wanted to explain just what the real purpose was. And the object was, whatever effect this may have, as an offset, to be relieved of interest and so on.

The Master: This does not offset against anything.

Mr. Harrison: I understand that.

Mr. Holt: Would it not be equally true if Virginia would use some Richmond & Danville Railroad stock for the purpose of lifting one of her thousand dollar bonds?

The Master: Do you want that addressed to the witness?

Mr. Holt: I have addressed it to Mr. Harrison.

The Master: I would a little rather have it addressed to the witness. This little side discussion is simply anticipating the discussion that is going to take place before me when we get through with this case.

Mr. Holt: We will come to those items in another schedule.

The Master: I do not think we have any misunderstanding, Mr. Harrison, of your position.

By the Master:

Q. This is simply a transcript of the book, is that it?

A. Yes, sir; that is all.

Mr. Hogg: That is reduction added, as I understand, to a gold basis.

The Witness: No, no gold basis.

Q. You have not changed the interest you found on the books. This is simply a photograph of the Sinking Fund operation?

A. Just a condensed statement of the Sinking Fund operation for that period of years.

Q. You have not modified any item?

A. No, sir.

Q. You have not changed any item?

A. No, sir.

The Master: That is the way I understood it.

Mr. Holt: We so understood it, but we had a modest idea that what was sauce for the goose ought to be sauce for the gander.

The Master: It excited your curiosity?

Mr. Holt: Yes.

By Mr. Holt:

Q. Now, turning to the last page of the same exhibit we find that you have made some payments here. Virginia has, by bonds, coupon bonds dated the 1st of January, 1866, registered bonds. 1866, coupon bonds, 1867, and so on, amounting to $6,576,913.60. Now, there was no reduction in those transactions as shown by your schedule, either to a gold basis or to a market value, was there?

A. No, sir.

Q. All bonds cancelled and all bonds issued and turned over were set down at their face value, were they not? This does not purport to set down any bonds cancelled.

Q. These were bonds issued for the purpose of paying interest?

A. Yes, sir.

Q. Of course it resulted in no bond cancellation, but they are set down here, the bonds so issued, as at their face value?

A. As reported in the Second Auditor's report. This is a copy of the figures found in that report.

Q. Were those bonds later funded?

A. I do not know that all of them were, but I know that some of them were.

Q. Were they not at a later date funded at 50 cents on the dollar?

A. I do not know.

Q. Well, have you no means of ascertaining the fact so that you may answer the question?

A. I presume I could find out; yes, if the records are there.

Q. I wish you would do that.

The Master: Have you got somebody that is assisting you, Mr. Potter?

Mr. Robinson: The bill shows that on account of Virginia's share of this debt she has already paid over seventy millions of dollars. These were refunded several times, not these particular bonds, but the bonds under this statute. Virginia has been paying interest on refunded bonds, and when we get through we will show that for every dollar of these bonds Virginia has probably paid a dollar and a half or maybe two dollars. That is a computation that we have not made.

The Master: That may all be true, but of course they are entitled if they want it, on a cross-examination, to this detail. It is a legitimate cross-examination and a legitimate inquiry. It may well be that later on you may cover the whole ground, but of course you understand that they are not required to accept your method of covering it.

By the Master:

Q. Have you now anybody working with you, Mr. Potter?

A. Yes, sir; but nobody sufficiently familiar with this matter to go into it.

Q. How long would it take to get this information?

Mr. Anderson: That would be an exceedingly difficult matter to work out, your honor.

The Master: When these items appear here and some effect is going to be claimed for them, they are entitled to cross-examine on them.

Mr. Robinson: This is a new schedule. Why don't they have some of their men look it up?

The Master: They are entitled to proceed and get all the information from Mr. Potter that they can. We need not spend any time discussing what is going to be done, because if Mr. Holt insists that Mr. Potter get it for him, he will have to do it.

Mr. Harrison: If they want any further information, why can't they get it for themselves?

The Master: They have a right to get it from Mr. Potter if they see fit.

Mr. Harrison: I never called for any statements to be made and never assumed that I would have a right to impose on their witness.

Mr. Lilly: You wanted our man to go and get a private book from one of the railroad companies.

Mr. Robinson: It is a computation that will take three days.

The Master: Of course I cannot help that.

Mr. Harrison: The only point that I am making is, not that there is any objection in the world to getting it, I would be glad to have them get it, but I think they ought to get it for themselves. I do not think they ought to require us to furnish them with additional information that requires the examination of books

Mr. Holt: We find on the last page of this exhibit, your honor, six millions of dollars and seven millions of dollars, an aggregate of over thirteen millions of what Virginia has done. And we have heard a great deal about the seventy million dollar business that she has done in this direction heretofore. And we find that this is a bond transaction, and we have very strong suspicion that these bonds were subsequently funded at 50 cents on the dollar, and have probably been funded again two or three times and pared again, so that thirteen million dollars does not sound so big.

The Master: I think you have a right to minimize it.

Mr. Robinson: We will put in a schedule.

Mr. Holt: We do not ask for a schedule, we simply ask if these bonds were subsequently refunded at a less amount than their face, and if so at what amount.

The Master: If you are prepared to furnish a schedule here, why can't Mr. Potter take the information and make that statement?

Mr. Robinson: It will take two or three days.

The Master: We will proceed here with the understanding that if it is feasible Mr. Potter will furnish the information.

The witness: I would like to know exactly the information I am to supply to them.

The Master: You have got five items of bonds on the last page of your Exhibit No. 1, and what Judge Holt wants to know is whether or not that list of bonds was not afterwards refunded at 50 cents on the dollar or some sum less than par and a subsequent refunding of those bonds at a sum less than par. In other words, so far as you can he wants you to trace out the final disposition of these particular bonds with reference to the question as to whether they were or were not refunded on a basis less than par, and if so how much.

The Witness: I can answer that question to an extent as to some of those bonds.

The Master: Do not stop to make those figures now.

The Witness: I have some of the data before me. There was one million—

The Master: I am not going to spend time here on something that does not get us anywhere; I am not going to wait around here for another day to allow accountants to compute. I want to know how adequately you can answer that question from the data you have there. If you can do it with sufficient adequateness to satisfy Judge Holt you may answer it now.

The Witness: I can account for a million and a half of it.

The Master: Will that answer your purpose Judge Holt?

Mr. Holt: I do not think it covers it.

The Master: We won't spend any more time on it now. You need not spend a minute on it now. You have a right to minimize that item, if you can, and the ouly question now is how that is going to be done in the most feasible way. You shall do it as far as that is concerned, and the other side do not object to it. But I am not going to wait here for Mr. Potter to make any computations now, because that delays the hearing. What we will do about that will depend upon some arrangement we will make later. But the understanding is that that will be done.

Mr. Robinson: Every one of those refunding Acts covers the bonds and interest. You have got to figure the interest.

The Master: What I am going to do this morning is to clean up this hearing, and matters like this that are going to be the subject of arrangement and adjustment we will take up after I finish the hearing. I want to get this hearing through. It is all right enough, but we will have a definite understanding. Can you proceed, Judge, with that understanding?

Mr. Holt: Yes, sir; I will go right along.

The Master: I am not going to run an accountant's office here in this hearing any longer. I did that on the other side quite a good deal; there is no reflection on anybody but time is too short and life is too uncertain. These accountants can figure a good deal better to themselves than right here.

Mr. Holt: We promise to be short.

By Mr. Holt:

Q. We will come now, Mr. Potter, to Exhibit 2, quotations on Virginia bonds from newspapers and likewise quotations on stocks set up in the supplemental answer.

The Master: If you have no objection, I have one or two questions of my own that I would like to ask in relation to that, if I will not be disturbing you in your cross-examination, on Exhibit 2. There are one or two items that I want to make some inquiries about.

By the Master:

Q. What is the meaning of this term that I find in here, Peelers, 6's? Look at it under December, 1874, there are 6's and Peelers. What are Peelers?

Mr. Robinson: Peelers are a bond that you have nothing to do with. They are merely bonds of 1872 that repealed the clause in 1871 making coupons acceptable for taxation.

The Master: Is there any objection to that explanation?

Mr. Anderson: The fact is, in December, 1871—

Q. You refer to consols?

A. That means $100 bonds.

Q. What is the occasion for the insertion of Peelers in here at all?

A. These quotations are just copies. They were quoted that way in the newspapers.

The Master: But if there is no such thing as Peelers in controversy here, I want Mr. Potter to strike that out of his schedule, because I do not want to be confused by it later on.

Mr. Holt: In other words, there is no neccessity of copying the whole quotations.

The Master: No. I suppose he has taken the quotations that he found.

Mr. Anderson: The only thing is that they have a different market value.

The Master: What good does that do me in finding the market value of other bonds? It simply confused it. Here are Consols. Are consols involved here? What are consols?

Mr. Robinson: Consols of the issue of 1874. You must remember that we are reducing bonds received in exchange for certain securities under Class C, and all kinds of bonds are coming

in. I am not sure whether or not there were any Peelers or any Consols, but it does not take very much of space to give the quotations for all Virginia bonds.

The Master: A quotation that does not relate to a bond that was used in payment of some of these securities not only does me no good, but confuses me and has not any bearing on this case, as it seems to me. What I want Mr. Potter to do is to go through this schedule and strike out of it everything, every single security that is not involved in this controversy.

Mr. Holt: You do not want market quotations of Swiss Tunnel stock.

The Master: What good does it do me except to confuse me? With that understanding I see no objection to it. I do not want it in here. I do not know what it proves, and when I come to look it over in the absence of the testimony of the witness I will be wondering what it is all about anyway.

Mr. Harrison: This is just a general statement of the quotations, but he applies that later on.

The Master: Yes, but I want this schedule cleaned up in this way, I want Mr. Potter to cut out every single item here that does not relate and which he does not know that it relates to some security involved in this controversy, and then I have a clear field before me. Have you any objection, Judge Holt?

Mr. Holt: I want them out.

The Master: Then Mr. Potter is to cut them out, and the checking in that regard is to be subject to the checking up of the accountants on either side. Now, proceed Judge.

By Mr. Holt:

Q. Mr. Potter, on the first page of Exhibit No. 2, you give quotations for 1860, 1861 and 1863 upon Virginia bonds; is that so?

A. Yes, sir.

Q. In the year 1860, I see 89, 88 and as low as 82 and a fraction?

A. Yes, sir.

Q. 1861, as low as 78½?

The Master: 78 is the lowest.

Mr. Holt: Yes, sir.

Q. Do you mean that these are quotations as of those dates.

market quotations upon Virginia bonds that constituted a part of the debt of Virginia prior to January 1, 1861?

A. I believe so; yes, sir.

Q. The Supreme Court in getting after us charged us the par of these bonds, didn't they?

A. They did, yes, sir.

Q. What is the object then of introducing a lot of market quotations on a bond here that the Supreme Court of the United States has said as far as we are concerned we shall be charged with at par?

A. I do not know, there is no object that I know of. I was not advised as to the object. I was requested to get these quotations.

Mr. Holt: I just could not see the materiality of it.

The Master: That puts it right up to counsel and they have notice in advance what they are expected to discuss on the argument.

Mr. Harrison: That is all right.

Q. What stock exchanges furnished these quotations?

A. The quotations in the paper shown are the quotations from the New York Exchange and the Richmond Exchange and the Baltimore Exchange in some cases.

Q. Did the City of Richmond have any stock exchange?

A. I do not know of personal knowledge, but I am advised on good authority that they did.

Q. Is it not a fact that there was no Stock Exchange in the City of Richmond in 1860 and 1861, and that the market quotations found in the newspapers of that municipality as of those dates were simply furnished by a single firm of brokers in that city?

A. I don't know.

Q. Do not the papers themselves show from which you got these quotations that to be the fact.

A. When these quotations—

The Master: The question is whether the papers show that to be a fact, that is all.

The Witness: I was just going to say that I did not see the papers. The quotations were compiled by two of my assistants, one checking the other, and I believe they are accurate.

The Master: You simply do not know because you did not see the papers?

The Witness: No, sir.

Q. Then you got these quotations second hand?

A. That is a fact.

The Master: That is, the work of getting them up was done by his assistants, is that what you mean by that?

Mr. Holt: Yes, sir. I have no doubt that is all right.

The Master: Perfectly. Unless it is conceded by you, in order to establish the continuity of legal proof, you will have to produce the assistants, but there will be no trouble about that.

Mr. Harrison: We will do that if it is required.

The Witness: I think the Judge will understand it would be impossible for me to compile as many quotations as that in the time I have had.

The Master: There is no criticism of you, Mr. Potter. They only want to get at just what the fact is.

Q. In order to make it specific, because we may ask one of your assistants about it, were not all these market quotations published in the papers consulted by you or by your assistants furnished by Lancaster & Company, brokers, or by Sutton & Company, brokers, in the City of Richmond?

A. I don't know.

Q. I notice on the same page and for the year 1863 you have a quotation purporting to be taken from the New York Times. Did you consult the New York Times itself?

A. Yes, sir; copies of the New York Times in the library room up-stairs.

Q. I was going to ask you where did you get them from, from the New York Times?

A. My assistant reports to me that he got it from an original copy of the New York Times in the Virginia State Library.

Q. Then you did not go to the City of New York to make the examination.

A. No, sir.

Mr. Holt: My real object in that, your Honor, is to find out whether or not we could check it without going to New York.

The Master: Exactly so, yes.

The Witness: They have some incomplete files of the New York Times, I believe, upstairs, of about that time.

Q. I notice on this same page 1, under date of January, 1863, that you have a quotation taken from the Richmond Dispatch

of a bid on bonds of 110, and that under date of January 4, 1863, the day following, you have a quotation purporting to have been taken from the New York Times upon the same bonds of 62.

A. Yes.

Q. How do you explain the difference?

A. I believe it is accounted for by the quotation of 110 being in Confederate and the 62 being in the currency used in New York.

Q. Would that be gold in New York or would that be greenbacks?

A. I cannot answer that question; I don't know.

Q. You have no authority then for saying that any of these New York quotations are made upon the gold basis?

A. No, sir; it does not specify that as I understand it in the papers.

Q. What is your judgment in the premises, if you have any?

A. I have no judgment in the premises. I do not know anything about the afterward history.

The Master: That exhausts it if you have not any judgment.

Q. I will ask you the further question if gold were at a great premium upon that date would you expect the market quotation in New York to be on a gold basis or to speak in greenbacks, what would you expect under such circumstances?

A. I think it would be quite natural to expect that they would be quoted in the currency, which was most used, and if gold, it would be specified as gold, provided there was a high premium.

Q. In other words, you would expect it to be a greenback quotation?

A. Quite probably; yes, sir.

Q. Now, what is the ratio there of difference between the New York quotations that I have referred to and the Richmond quotation?

A. It is nearly, approximately 2 to 1.

Q. Nearly two to one?

A. Not quite.

Q. Would you not infer from that then that it only took so far as market quotations are concerned about two Confederate dollars to make one dollar of greenbacks?

A. No, I would not conclude that.

Q. Why then would the same bond that was bringing in the

City of Richmond 110 in Confederate currency bring $62 in greenback currency in the City of New York?

A. I believe it is a matter of record that Confederate currency was much more depreciated than greenbacks at that time.

Q. The ratio there though is about 2 to 1. In reducing to a gold basis in your subsequent schedules have you not utilized a greater ratio than 2 to 1?

A. I have used the ratio quoted as already in the record on the date or as near to the date as I could get to it when the payment was made.

Q. What is the smallest ratio you have used in your subsequent calculations?

A. I think 2 to 1, in some cases, 3, 5, 7 1-2.

Q. And 7 1-2; and what is the highest ratio?

A. I think it went as high as 23, twenty odd.

Q. Can you discover that much difference in any of your market quotations in New York and Richmond?

A. I have made no examination along those lines.

Q. I wish you would glance over your Exhibit No. 2 and see whether or not you ever at any time have set down the difference of 7 or 20 to 1 between the market quotation at the two different points, upon the same bond.

A. In July, 1863, I have used a quotation of 9.

Q. What page, please?

A. I find that in my Schedule D. In reducing cash received on that date—during July, I find a quotation of 135 on Virginia 6's.

Q. Where is that quotation, please?

A. That quotation is 63, July 17th.

Q. At what place, though, Richmond or New York?

A. Richmond Dispatch—or, Richmond, Virginia. And on the 13th of the same month the New York quotation was 61.

Q. What would the ratio be there?

A. That is about the same that you quoted.

The Master: The fact that you want to develop is that he has not in any instance undertaken to reduce them to gold basis predicated upon the statement that he uses elsewhere.

By the Master:

Q. Is not that true, that you have not made any effort to re-

duce this table of quotations that you have made here to a gold basis?

A. That is true.

By Mr. Harrison:

Q. (Handing book). There is January 4th, 1864.

The Master: Is that the date?

By Mr. Holt:

Q. The question about that was whether all of these quotations had not been furnished, and is not the fact apparent upon the paper?

The Master: The question is whether the paper does not show it.

Mr. Harrison: Here it is on the book.

The Witness: Sales of stock in Richmond by John A. Lancaster & Son, No. 197 Main Street, two doors above the Farmers' Bank, for the week ending January 2, 1861. Virginia six per cent. registered bonds, sales, $80.

Mr. Harrison: They all show sales. It is a weekly report of sales.

Q. But I find upon this page, no sales, under this date of January 3, 1863, but a bid of 110.

The Master: You do not want to take time to go through and check up these items. What you do want is to have the accountant do that, and if the checking up shows a condition that you want to have appear in the record—

Mr. Holt: Your Honor will not quarrel with me when you see my purpose. What I wanted to know was whether or not all of these market quotations on bonds taken from the Richmond papers were not furnished to the Richmond papers by one or the other of those brokerage firms.

The Witness: The quotations that I have just read would indicate that as to this date. I have not examined the other dates.

Q. Well, can you conveniently and speedily look at another one or two there by way of illustration?

A. On January 11th that is true, the same house.

Q. And does it show that they are all private sales? Is there not something in those newspapers to indicate that?

Mr. Holt: I have sold some few bonds at times when I was so hard up I could hardly walk, for anything I could get.

The Master: You were lucky to have them at that time. Why can't we have those papers gone over and have a succint statement made for whatever it may be worth.

Mr. Holt: We probably would like to have it when we come to the stocks.

The Master: Whatever may be needed in that regard, we will have that done, but before we conclude I would like to have you indicate just exactly how far you would like to have him go in that respect.

Mr. Holt: Well, he might perhaps, after an examination, put into the record this, if it be the fact, that all of the market quotations taken from the Richmond papers relative to Virginia bonds for 1860, 1861 and 1863, and for every other year given in his Exhibit No. 2, were furnished by private brokers, based upon private sales; that is, if that be the fact.

The Master: Now, have the original sources examined by somebody and see whether that can be accurately stated; and if it can be, why, have that statement made. The real point that Judge Holt has in mind is that there was no public stock exchange in Richmond, and that this information is simply information published from private sales by brokerage concerns from time to time.

The Witness: I have found that term used, Richmond Exchange, frequently; and I made some inquiries around Richmond and was told that there was an exchange.

The Master: You cannot testify to that.

Mr. Lilly: We do not think it is a fact.

Mr. Holt: I will ask him one question on that point, and that will test the exhibit too.

The Master: That is right.

By Mr. Holt:

Q. You have no authority then for saying that there was a Richmond Exchange in existence upon the dates embraced in this exhibit, other than hearsay?

A. No, sir.

Q. Turn now to page 8 of this same exhibit, Farmers' Bank of Virginia, 1860, November 2nd, quotation 102. Where did you

get that quotation?

The Master: What date is that, Judge?

Mr. Holt: November 2nd, 1860.

A. The Farmers' Bank of Virginia.

Q. Where did you get the quotation under that date of 102, showing a premium?

A. From the Richmond Dispatch.

Q. Does your exhibit show it?

A. There is a note added—it was omitted when this was originally written up, but there was a note added, and if it did not get into your exhibit, it was meant to.

Mr. Holt: I have nothing here to show.

The Master: I have a note here.

Mr. Holt: It is not here.

The Master: It is on mine.

Q. After you have examined the newspapers that you have just now consulted, do you want to change your statement that they are taken from the Richmond Stock Exchange?

A. If I find that this is not in accordance with the fact I certainly want to change it.

Q. You are not satisfied yet?

A. I am not satisfied, no.

The Master: Now, I suggest that when you are prepared to make your general statement in relation to the Richmond Dispatch, I do not know whether these quotations are bid and asked, and it is evident that the Richmond Dispatch so far as you have produced it does not show either bid or asked but does show sales; and if that be the fact, simply have it appear that they are reports made by brokers of sales, which is something that your exhibit does not show.

Mr. Holt: I think some of those brokers' reports simply show bids and what was asked; I do not think it is uniform. Some of them show sales.

The Master: Then in that case my suggestion could not be followed.

Q. What was the quotation, according to your Exhibit No. 2, on Farmers' Bank of Virginia stock upon the date nearest to January 1, 1861?

A. 100, on January 4, 1861.

Q. What would be the quotation on the next nearest date to January 1, 1861?

A. December 14th, at 100—December 14, 1860, at 100.

Q. You find then the stock of that bank quoted at par a few days before January 1, 1861, and three days after January 1, 1861?

A. Yes, sir.

Q. Do you know whether either one of those quotations was an actual sale?

A. No, sir; I have not that information before me.

Q. Do you know whether they represent a bid?

A. That is my understanding of these quotations, that they were bid prices.

Q. And you do not know whether any sales resulted, that is whether those bids were accepted or not?

A. I cannot say.

Q. And you do not know how many bids were made?

A. No, sir.

Q. Suppose a bid of $100 was made on the 4th day of January, 1861, upon 10 shares of the Farmers' Bank of Virginia, which bid was not accepted, would you take that as any evidence at all of the value of the stock on that day in the market?

A. I think it would be an indication of what people were willing to pay for it, and that would establish the value to a certain extent.

Q. Would not that be a pretty weak evidentiary fact, if some man through a private broker were to offer you par on 10 shares of stock in the Farmers' Bank of Virginia on that date, and you had refused it?

A. Well, I do not know, because I would have to know something about what value I put on it.

Q. Well, would that indicate the state of the market at all?

A. I think it would.

Q. Upon that bank stock?

A. I think it would give a fair indication of what the market was. They would not take the time and trouble to quote them otherwise.

Q. Would you be willing to advise a client upon evidence of that kind that that was the market value of that stock?

A. Absolutely not.

Q. You would consider that pretty slim picking?

A. I would have to see some evidence of sales at that price.

Q. On January 18, 1861, you have the Farmers' Bank of Virginia, 99. Was that a bid or what was asked, or does it represent a sale?

A. I will have to make the same answer to all of this, Judge. I do not know of my own personal knowledge. I believe that they are bid quotations.

The Master: There is no occasion for having this record left in that uncertain condition, and I do not want it left in that way. I want you to check this up and put on some kind of a notation so that when I look this over I will know whether these are bids or offers or sales, all of them. There is no occasion for leaving this in this uncertain condition, and I cannot have it left in that way. I suppose you would like to have that done too, Judge?

Mr. Holt: Yes, sir.

The Master: Check it all up, so we will know whether they are bids or offers or sales. That of course you can do later.

The Witness: I will.

The Master: And I want you to check it up with the accountant on the other side.

Q. Now, in 1863, on January 7th, the same stock you have quoted at 103, and on January 21st of 1863 at 105, January 29th. 105, and February 7th, 107 1-2, March 14th of 1863, 111, and on April 8th, 1863, 131, and April 18th, 1863, 128. Do you know whether those quotations represent bids, sales or prices that were asked?

A. I do not.

Q. Nor do you know, as I understand you, how much stock was involved in either one of those quotations?

A. No, sir.

Q. Whether, if it was a sale, one share or a thousand shares were sold?

A. No, sir.

Q. If it were an offer whether it was made upon one share or a thousand shares?

A. No, sir.

The Master: And there is another thing that you may put in when you check up and give us the detail; if the sources of your

information show the amount of the transaction, put that in.

Mr. Holt: I was going to ask that.

Q. Then your schedule does not show, in either instances, the amount of the transaction?

A. No, sir.

Q. Or whether it involved more than one transaction?

A. No, sir.

The Master: We will suspend here for five minutes.

By Mr. Holt:

Q. Taking the Exchange Bank quotations now upon the same page of Exhibit No. 2, we find on November 2, 1860, this stock quoted according to your exhibit at 105 1-2. Was that a bid?

A. I believe it was. I do not know positively.

Q. Was it accepted?

A. I don't know.

Q. How about on the 9th of November, the quotation of 104½, was it a bid?

A. I don't know, I think it was.

Q. On November 16th, 1860, 104½?

A. The same is true.

Q. November 23, 1860, 100?

A. The same.

Q. And a bid I presume simply on December 14th, of 101?

A. Yes, sir.

Q. There was nothing to show what was asked?

A. No, I have not anything before me to show that.

Q. Nor does your exhibit show whether any sales were made upon either of those dates?

A. No, sir.

Q. Taking the various quotations in the year 1861 upon the stock of this bank, what have you to say in the same respect thereto?

A. The same answer as to your previous questions.

Q. How about the quotations under the year 1863?

A. The same answer.

Q. Taking the bank of Virginia, you have a quotation under date of November 9th, 1860, of 70. What do you mean by that, what was the par value of that stock?

A. 70.

Q. Then that quotation is at par?

A. Yes, sir.

Q. And it was the same upon all the dates given in that year?

A. Yes, sir.

Q. From what paper were those quotations taken?

A. The Richmond Dispatch.

Q. Do they represent bids, sales or offers?

A. I believe they represent bids.

By the Master:

Q. Have you any original knowledge on that point?

A. No.

Q. Did you see the Dispatch?

A. No; I stated a while ago that I had not prepared this personally. My answer is the same as to these questions.

Mr. Holt: Then the witness had better say he does not know.

The Master: Yes; that is all you want to answer to that question.

The Witness: I don't know.

The Master: You simply don't know and that exhausts that subject. If they want to pursue it further, then they will have to pursue it with some other witness.

By Mr. Holt:

Q. You may take the quotations on the stock of the Bank of Virginia for the year 1861. Do you know where those quotations came from?

A. The Richmond Dispatch.

Q. Do you personally know that?

A. It was reported to me by my assistant who took them from that paper.

Q. You did not examine the paper yourself?

A. No, sir.

Q. And you have no personal knowledge upon the subject whether those quotations represent bids, offers or sales?

A. No, sir.

Q. Nor how much stock was involved in either transaction.

A. No, sir.

Q. Is the same true so far as the quotations given throughout the year 1863?

A. With one exception in 1863, the quotation of November 27th as I read it would be 122 bid and 123 asked.

By the Master:

Q. As far as your knowledge of the facts goes the same is true as to all these quotations that you have here in your exhibits, is that right?

A. Yes, sir.

Q. These quotations are the result of work done by two of your assistants.

A. Yes, sir.

Q. And you have not any personal knowledge of the sources from which they came?

A. Except that I told them to take certain books; if they took any others, I don't know; they would not be likely to do that.

Q. That does not give you personal knowledge of the quotations.

A. That is true..

Q. You know what they went for, but you did not see it?

A. No.

Q. You did not have anything to do with it?

A. No.

The Master: That covers the whole ground as far as you are concerned.

Mr. Harrison: In a similar situation in the examination of the defendant's chief accountant, where his testimony related to exhibits that were compiled by his assistants, we made no question at their request as to the integrity of the work upon which he based his testimony, conceding without requiring them to bring their witness who had made the investigation to the stand that it might be accepted as truly and accurately made. I assumed the same course would be pursued here, as one man cannot be on a dozen different jobs at the same time. Now, if it is not going to be pursued and we are to be required to bring in witnesses to vouch for the integrity or the accuracy of the work. I would like to know it.

The Master: There has not been anything said yet to indicate that they propose to question it, so far as that is concerned.

Mr. Holt: The point with me, Mr. Harrison, is that I feel that the entries here on November 27 of 122-123, I have no

doubt that is correctly taken from the paper, so I am not questioning that. But what I did want to get was some additional information, and that is whether or not that represented a bid or a sale or an offer.

By the Master:

And that Mr. Potter does not know, and I have already instructed Mr. Potter to elaborate this schedule and make it appear with reference to every item—first, whether it is asked or bid or a sale, and, second, if it shows the amount of the transaction, so that when this schedule is completed it will show all those details so far as they are available. Of course that Mr. Potter cannot do because he does not know anything about the original information. They are not raising that question. They are simply developing this in order to straighten the thing out. Of course I know that Mr. Potter cannot testify to those things, and Judge Holt is simply developing the fact that he could not do that.

Mr. Holt: Simply indicating that we want the additional information.

The Master: Precisely, and I have instructed Mr. Potter to elaborate this schedule so it will give everything that the original sources do show on that point.

Mr. Holt: I was going to ask the names of his assistants, but that perhaps is unnecessary under the circumstances.

The Master: Not the slightest objection to that. Who are they?

The Witness: The man who worked first on this is Mr. Wallerstein, a young attorney in the Attorney General's office here, and later on I had his figures checked up by my assistant, Mr. Haddock.

By Mr. Holt:

Q. Should not the quotation of November 2, 1860, 105 1-2 be 104 1-2?

A. Exchange Bank?

Q. Yes.

A. I have no knowledge whether it should be or should not be.

Q. Turn now to page 9 of the same exhibit, Orange & Alexandria Railroad Company stocks. Does your exhibit show any quotations on the stock of that company for the year 1860?

A. No, sir.

Q. It is confined to bonds?

A. Yes, sir.

Q. For the year 1861?

A. The quotations are of bonds.

Q. You have none for that year on stocks?

A. No, sir.

Q. And the only market quotations you give on the stock of that company are found in the year 1863?

A. Yes, sir.

Q. Do you know whether or not your assistants searched for market quotations upon the stock of this company for the year 1861?

A. I believe they did; my instructions were to do so.

Q. I see also that you have marked upon this page, all the way through, the subject of bonds, Richmond Exchange. By what authority did your assistants do that?

A. I do not know.

By the Master:

Q. Well, you assumed without investigation that there was an exchange, I suppose? Whether there was or not you do not know.

A. The assumption, if it might be called such, was based upon the figures found by my assistants. I judged that there was a Richmond Exchange, and I made some inquiries, and I was told that there was.

The Master: I will have it appear in the record that the Master has sent for the directories of Richmond for 1860 and 1866, and has examined those two directories, and is unable to find anything in the directories that indicates the existence of a Stock Exchange in either one of those years. I have looked under the head of Richmond, I have looked under the head of Stock, and I have looked under the head of Exchange, and I do not find anything to indicate that there was any Richmond Stock Exchange, in the directory, for whatever that may be worth. We do not find the directories between 1860 and 1866. A curious thing is that in 1860 we do not find the Richmond Dispatch in the directory at all. I do not understand why, exactly, but it is not there. Whether there are in existence any other directories or not I do not know.

The Witness: It is probably the Daily Dispatch.

Mr. Lilly: It is marked the Daily Dispatch in the 60's, your Honor.

Mr. Anderson: I think witnesses that we will examine will tell us about that. Mr. Williams will tell us about that. He was a broker and banker. He remembers Lancaster & Company.

Mr. Howard: May it please the Master, if the gentlemen on the other side will accept this, I was asking a son-in-law of Mr. Lancaster, of the old firm of Lancaster and Company, and he told me that Lancaster & Company came here some time in the 40's, and there was no Stock Exchange here whatever at that time, and there were several brokers representative offices here after that time, Davenport & Company, Lancaster & Sons, but my information is that there was not any Stock Exchange during the war. And if you were to examine those papers further on during the war to its close, you will find where they have sold at public auction a whole lot of stocks.

The Master: I suppose we might find out when the Stock Exchange of Richmond was incorporated.

Mr. Holt: We have sent for that information.

The Master: As the evidence stands before me now there is no evidence before me that there was any Stock Exchange in 1860 or 1866, or in the intervening years. If there is any evidence, and it is obtainable, it will be produced, of course.

Mr. Anderson: I am very sure there was no Stock Exchange in Richmond until after the war.

The Master: The New York Stock Exchange is not incorporated.

Mr. Holt: The gentleman we sent down to make the investigation will find out whether it is incorporated or unincorprated.

Mr. Howard: There were only two or three brokers here, as far as any of the records show there in the papers or anywhere else.

By Mr. Holt:

Q. Turn to page 10, Manassas Gap Railroad Company. Have you set down any market quotations on the stock of that company for any year in your exhibit?

A. No.

Q. You have undertaken, however, to give the market quota-

tions on bonds of that company for 1860 and 1863?

A. Yes, sir.

The Master: There were 17 brokers here in 1860.

Mr. Howard: I had no such idea.

The Master: The directory entertains that idea. That simply shows that we cannot trust to memory away back there.

Q. Is anything said about bonds of the Manassas Gap Railroad Company in the supplemental answer of the defendant filed in this cause?

A. No, sir

Q. They are not claimed anywhere by the defendant as an asset, are they?

A. The Manassas Gap? Not the bonds; no, sir.

Q. Page 11, Richmond & Danville Railroad Company, stocks. You have given certain quotations here upon the stock of that Company, market quotations during the year 1860. They are set down as 60, 60, 60 and 58 upon various dates. Do you know whether those quotations represent sales or offers?

A. No, sir.

Q. Have you any knowledge upon the same subject with respect to quotations on that stock set down by you during the year 1861?

A. No, sir.

Q. During the year 1863?

A. No, sir.

Mr. Holt: It is understood, I believe, your Honor, that in the amended or supplemental schedule it will give this additional information upon this stock.

The Master: Yes, the additional information inquired for is to apply to every item on that schedule so far as applicable. That is understood, is it, Mr. Potter?

The Witness: Yes, sir, I will provide that.

Q. Page 12, Richmond & York River Railroad Company, stocks. Did you find any market quotations upon the stock of that company for the year 1860?

A. No, sir.

Q. For the year 1861?

A. No, sir.

Q. You found nothing but quotations, which you have set down, during the year 1863?

A. Yes, sir.

Q. Were there any market quotations upon the stock of the Richmond & York River Railroad Company during the year 1861?

A. I don't know.

Q. Either in New York, Baltimore or Richmond?

A. I do not know.

Q. Or in any place else?

By the Master:

Q. All you can say about that is, I suppose, that you instructed your assistants to get them if they were in existence, and their reports were negative on those points?

A. Yes, sir.

Q. Is that it?

A. That is it, yes, sir.

By Mr. Holt:

Q. Did you find any market quotations upon the stock of the South Side Railroad Company for years 1860, 1861, 1862 and 1863?

A. No, sir.

Q. There were none, were there?

A. I do not know.

Q. Well, if there were no market quotations they could hardly enter into the valuation of the stock as a factor, could they?

A. Obviously.

Q. Turn to page 13, please, Mr. Potter, Virginia Central Railroad Company, stocks. You have quotations here upon the stock of that company for the year 1860, the year 1861, and the year 1863. Do you know upon what transactions those quotations were based?

A. No, sir.

Q. You don't know whether they were bids, offers, or sales?

A. No, sir.

Q. Or how much was involved in the transaction?

A. No, sir.

Q. What was the quotation on that stock, as given by you, upon the date nearest to January 1, 1861?

A. January 4, 1861.

Q. What was the quotation?

A. 50.

Q. Upon the next nearest date to January 1, 1861?

A. January 11, 1861.

Q. What was that quotation?

A. 47 1-2.

Q. Upon the next nearest date?

A. January 18th.

Q. Was it January 18, 1861, or December 14, 1860?

A. January 18th would be a little nearer, one day.

Q. What was that quotation?

A. 47 1-2.

Q. What was it upon December 14, 1860?

A. 50.

Q. Page 14, Virginia & Tennessee Railroad Company, stock. Did you find any market quotations for the year 1860?

A. No, sir.

Q. 1861?

A. No, sir.

Q. You only found two quotations, and they were in the year 1863?

A. Yes, sir.

Q. One was July 24th of that year, 115, and the other September 3d of that year, 135?

A. Yes, sir.

Q. Did you search the New York papers for the purpose of ascertaining whether they contained any market quotations upon this stock for 1860 or 1861?

A. I do not think so, Judge; I am not sure.

Q. Did you examine the Baltimore papers with the same view?

A. No; we made no examination of any Baltimore papers. The quotations that I have indicated here as coming from the Baltimore Exchange are quotations found in the Richmond Dispatch.

Q. Then all of your quotations, as I understand, are derived from the Richmond Dispatch, wherein they state the New York, the Baltimore and the Richmond quotations, is that correct?

A. Well, with the exception that there was one file of the New York Times which we examined, and it is indicated there New York Times, New York Exchange. If it says Richmond Dispatch, New York Exchange, it means the quotations on the New York

Exchange reported to the Richmond Dispatch or the Daily Dispatch.

Q. However, no quotations were found anywhere upon the stock of this company for the years 1860 or 1861?

A. No, sir.

By the Master:

Q. Then the files of the New York papers have not been examined for the purpose of ascertaining what the conditions were in connection with any of these stocks or bonds; that is, I mean the files in New York?

A. I had an inquiry addressed to the Financial Chronicle, but I could not get any satisfactory information from that paper.

Q. What do you mean by an inquiry addressed to the Financial Chronicle?

A. I sent to one of my partners and had him go there and see if they had files, and they did not.

Q. You mean to say that the Financial Chronicle did not have files of the New York newspapers?

A. No, they did not have their own files.

Q. They did not have any files that went back that far?

A. No, sir. The Commercial and Financial Chronicle is the full name.

Q. They did not have any files that went back that far?

A. No, sir.

Q. You did not pursue the investigation far enough to go to the New York Times office or the New York Herald office or the office of any of the New York papers which were current publications of those dates?

A. No, sir, my inquiry—

Q. Your inquiry as a matter of fact did not go so far as to go through the files of the New York newspapers that were then published?

A. No, sir.

Q. Which undoubtedly contain all of the New York Stock Exchange quotations of that period?

A. No, we did not make such examination.

Q. So what that would disclose does not appear in this record, as to market values or as to quotations upon these various stocks or bonds?

A. No, sir.

Q. What is the reason?

A. I do not know that there is any reason.

Q. Well, you get it. I would like to have that in the record. I do not care which paper you go to. I suppose the Times or the Herald or the Sun or any of those papers. Take any of those papers and give us what they show over this period in relation to these stocks and bonds.

The Master: If we are going into that subject we might just as well exhaust it; don't you think so, Mr. Harrison?

Mr. Harrison: I see no objection in the world.

Mr. Holt: We were just contemplating sending a man there for that purpose.

The Master: The understanding is that that is to be done, that a schedule is to be furnished—of course we do not have to stop for that. Which paper do you prefer to take, Judge?

Mr. Holt: I should be inclined to leave that to the gentlemen who make the investigation. They may take more than one.

The Master: I imagine of course, subject to typographical errors, I never have known any instance where one financial column was not a duplicate of the other.

Mr. Holt: Either one of those papers, the Herald or the Times.

The Master: I suppose the New York Herald is considered as good a financial authority as any paper in the country. Suppose we have the New York Herald.

Mr. Holt: The New York Tribune during the war seems to have been looked upon with some favor.

Mr. Anderson: I expect any one of those great dailies would give an accurate report of each day's quotations on stocks. I applied to the present president of the New York Stock Exchange, Mr. Noble, who is a friend of mine, for information with the object of getting evidence about this matter, and he told me after inquiring into the matter that there was no record kept of transactions of the New York Stock Exchange during the war, and that the only source of information was what your Honor suggested, the daily papers, the great dailies of New York. Their reports would be the only things available.

The Master: I think that is true. I suppose we would all concede that while the late lamented H. G. had charge of the Tri-

bune, that some departments at any rate were very valuable authority. Whether H. G. knew as much about finance as he thought he knew about some other things may be a question of some doubt.

By Mr. Holt:

Q. Page 15. I see you have upon that page of Exhibit 2 the heading, one column, James River and Kanawha; the second column, Richmond & Petersburg Railroad Company, and the third column, Richmond, Fredericksburg & Potomac Railroad Company, and in each of these columns you have certain years purporting to give quotations, but nothing to indicate whether they were market quotations upon bonds or stocks. Which do they represent?

A. Stocks.

Q. Take the first item, James River and Kanawha Company, what did you find to be the market quotation on the stock of that company on November 2, 1860?

A. I think it is 18 1-4, may be 18 1-2.

Q. Which is it, a quarter or a half?

A. My copy is blurred.

Q. It is a half here.

A. 1-2.

Q. What was it quoted at on November 9, 1860?

A. The same.

Q. Is it not true that all the quotations during the year 1860 on the stock of that company are the same?

A. Yes, sir.

Q. It stood as shown then by this schedule as having a market value from November 2d to December 14th of 18 1-2, a value of 18 1-2?

A. Yes, sir.

Q. Is that true?

A. Yes, sir.

Q. What was it for March 1, 1861?

A. 18.

Q. It seems to have been pretty regular as shown by that exhibit?

A. The quotations indicate that.

Q. Would that indicate a uniform value in the market without much fluctuation?

A. I think so. We have no quotations between December 4th and March 1st.

By the Master:

Q. Why would not it indicate that the stock was inactive?

A. Yes, it would.

Mr. Holt: Would it indicate that, your Honor, or would it indicate that it just stood uniform and not subject to fluctuation?

The Master: I suppose when you get right down to it, it is probable that some stock broker would have more intelligent information about that than perhaps any of us have.

By Mr. Holt:

Q. Now, you have given the market quotations likewise for the stock of that company during the year 1863. What was the lowest quotation during that year?

A. 19.

Q. What was the highest?

A. 22.

Q. And what the intermediate quotations?

A. 20, 20 1-2.

Q. Then it ran from 19 to 22, did it?

A. Yes, sir.

Q. You have given the market quotations of the Richmond & Petersburg Railroad Company for 1860?

A. Yes, sir.

Q. Uniformly at 64?

A. Yes, sir.

Q. And in 1861 running from 57 1-2 to 64?

A. Yes, sir.

Q. And in 1863 at 140?

A. Yes, sir.

Q. Where did you get the market quotations on the stock of the Richmond, Fredericksburg & Potomac Railroad Company for the year 1860?

A. From the Richmond Dispatch.

Q. Does your exhibit show that?

A. There is a foot note on that page, and if it is not on your copy, it is an oversight.

Q. I have another copy with the foot notes on it, but it is not

there. From the same source during the year 1861?

A. Yes, sir.

Q. And 1863?

A. Yes, sir.

Q. I would like to inquire now whether you consulted the present market quotations of that road?

A. No, sir.

Q. Then you have no knowledge or information upon that subject?

A. No, sir. I have heard it stated once or twice, but I do not remember what the figures were.

Q. Is it not a fact that the stock of that company is now selling at 320?

A. I don't know.

The Master: Which one is that?

Mr. Holt: Richmond, Fredericksburg & Potomac. I will want to file a memorandum on that, your Honor, but it must be borne in mind that that was never disposed of.

The Master: If there is one thing surviving and seemingly healthy and vigorous, that would be a good idea to have it shown.

Mr. Holt: There is another thing that might be shown as we go along, and I will ask him that question.

Q. All of these railroad companies and other corporations whose securities have been listed in the supplemental answer, that survived the Civil War, went right out of one system of currency into another without any jar, did they not?

A. I couldn't answer that question; I don't know.

Q. Have you any evidence that any of them ever changed their securities or anything of that kind, just moved right along out of one regime into another, didn't they?

A. I don't know. I have not made any inquiry looking toward the ascertainment of that fact.

Q. Did not the report of the Auditor of the Commonwealth of Virginia indicate that?

A. I have no knowledge of any such statement in the Auditor's report.

Q. Have you any evidence anywhere or knowledge that would lead you to believe that their securities were changed or that they did anything but go right along?

A. No, sir, I have no information on that point.

Mr. Holt: Now, I do not want to take the time, your Honor, to detail all the stocks mentioned in the supplemental answer, but I will perhaps cover my point by this question:

Q. Have you set forth in this schedule all of the market quotations that you were able to find upon the stocks of the various companies mentioned in the defendant's supplemental answer?

A. To the best of my knowledge and belief, yes, sir.

Q. So quotations have not been obtainable upon the stocks enumerated in the supplmental answer save and except those set down in your Exhibit No. 2?

A. No, sir.

Mr. Holt: Of course your Honor sees our point.

The Master: Certainly. Now, I am going to give this instruction in relation to this matter of the schedules, provided it is acceded to by both sides. This schedule of course has got to be very elaborately amended. Now, my judgment is—please note what I am saying—my judgment is that the convenience of all concerned is going to be served by striking out this schedule that is now in, and putting in its place this new schedule. This new schedule must show these things: first, a column showing the amount, that will show the amount of the transaction; second, whether it is asked or bid or a sale. Now, there are four columns that must appear in the amended or revised schedule. Each one of these stocks and each one of these transactions must appear, if they do appear, under all of those four heads; amount, asked, bid, sale. Now, that will have to be done in relation to every one of these items; and when we get the new schedule, it seems to me it will absolutely supersede this old one; and my judgment is that the printing of the old one in the record will be a matter of no consequence; I shall not look at it, the new schedule is the one I shall go by, I do not care anything about the old one. And the new work that is done must be done on the same basis; there must be columns, so that when I look at it and the counsel look at it they will see right off the amount of the transaction. Of course if it is simply a bid or an offer, there is not anything under the column of the amount; if it is a sale, the amount of the transaction will appear. My own opinion is that this amended schedule is the only schedule that is worth while at all to print. Of course that renders a good deal of Mr. Holt's cross-examination entirely unnecessary, but when we get this amended schedule that will ren-

der a large amount of his cross-examination unnecessary, because it will show just exactly what he developed on the cross-examination. My idea would be to strike out the first schedule and not print it at all, and simply print this completed schedule as the original schedule, and that will cover everything that he has in here, and it will cover everything that the accountants are able to find by this examination in New York. Now, if it is agreeable to both sides, I will give that instruction. Of course, strictly speaking, you will have to agree; if they do not agree, this schedule that has been put in, you will duplicate that schedule practically with the information that we are going to have. Now, as far as I am concerned I shall never look at the original schedule, it is not worth my while. The final schedule will give me all the facts. And the Court won't look at it. Of course if you feel under the circumstances you have some advantage by having the record disclose that it is your cross-examination that has developed the necessity for amending the schedule, that you are entitled to and that you will have. Unless you do feel that, I will wipe that all out and simply put in the completed schedule.

Mr. Holt: Your Honor, the other day when Mr. Hillman was on the stand the cross-examination resulted in the correction of a schedule.

The Master: Yes.

Mr. Holt: Our friends insisted on the original schedule remaining and the corrected one going in.

The Master: That is right, they did.

Mr. Holt: And we would prefer that in this case. Because while the Master may not look at it, it may cause some comments.

The Master: You are entitled to the benefit of that.

Mr. Harrison: It is pefectly agreeable to us that that be done.

The Master: I am by no means certain that if I was in the position of the counsel for West Virginia, I would not insist on that. Of course your cross-examination led to the instructions to prepare this final schedule, and so far as that bears on any of the issues you are entitled to the benefit of it. Now, will you proceed with the cross-examination further?

Mr. Holt: And I have just been handed a little pamphlet, your Honor, of the Richmond Stock Exchange; it seems to have been organized April 8, 1873.

Mr. Harrison: I would like to ask that you suspend at this

point in order that we may put on the stand Mr. John L. Williams, and one or two witnesses who have come in and who cannot remain here until after the lunch hour.

The Master: When we have the transcript printed it will be printed right along in its order, but for the convenience of the parties we will suspend here and take their testimony.

Mr. Holt: We have no objection, Your Honor. I think perhaps it is in the interest of expedition, and perhaps a matter of courtesy. And one other thing, too, perhaps I should call your attention to, Your Honor. I have just been handed a note to this effect: there is a file of the New York Herald for 1860 and 1861 in the library, upstairs.

The Master: That does not cover 1863.

Mr. Holt: No, it does not.

The Master: It may be that you could work out as a matter of convenience 1860 and 1861, right here, and then finish 1863 in New York. However, consult your convenience about that.

JOHN L. WILLIAMS,

called as a witness on behalf of the plaintiff, being duly sworn to testify to the truth, the whole truth and nothing but the truth, testified as follows;

The Witness: That is a little hard thing to say, sir; I am here to give testimony about things that occurred sixty years ago. It is hard to tell whether I am telling the truth or not. I am not telling anything wrong deliberately.

The Master: You will do the best you can.

The Witness: Yes.

Mr. Holt: I think he exhibits enough conscience to be reliable, as far as I can see.

DIRECT EXAMINATION.

By Mr. Anderson:

Q. Where do you live, Mr. Williams?

A. Where I have lived for 83 years, sir, Richmond.

Q. The city of Richmond?

A. Yes, sir.

Q. What is your occupation?

A. Banker.

Q. Where is your place of business? In what community or city?

A. In Richmond.

Q. How long have you been engaged in the banking business in the city of Richmond, Virginia?

A. Lets see, 1868, I think—hold on a minute, no, it was 1858. Now you can calculate. Between fifty and sixty years, sir.

Q. Since what year have you been engaged in that business in the city of Richmond?

A. Since about 1858, I think, sir.

Q. Have you been engaged in that business alone or as a member of a firm?

A. As a clerk with John A. Lancaster & Son in 1858. After that, during the war, I was a member of the firm of Lancaster & Company. Well, then, in 1873 they broke, and I started on my own account, and have been in business more or less.

Q. Were you engaged then in the banking business in the City of Richmond during the entire period of the war?

A. Yes, sir.

Q. From 1861 to 1865 inclusive?

A. Yes, sir.

Q. Please state, Mr. Williams, what was the currency in circulation in Virginia and in the City of Richmond after 1862 and until the close of the war, between the States?

A. To the best of my knowledge, information and belief, sir, it was Confederate money.

Q. In what currency were the current transactions of that period conducted?

A. In Confederate money ordinarily, divers styles of Confederate money.

Q. With reference to what currency, as a measure or standard of value, were the transactions of Confederate Virginia conducted?

A. Say that again.

Q. With reference to what currency as a standard of value, measure of value, of current transactions, were these transactions conducted during that period?

A. Why, everything, all business was done in Confederate money; and gold was a commodity, a thing that was bought and sold, I suppose from 1861 on it disappeared pretty well; from the opening of the war gold was bought and sold.

Q. And disappeared from circulation?

A. Oh, yes.

Q. In what currency and with reference to what currency were the accounts and transactions of the banks in Virginia, in Confederate Virginia, conducted during that period?

A. There was never anything else but Confederate money, sir.

Mr. Holt: Now, what period is that, Major Anderson?

Mr. Anderson: The period of the war, the period from 1861 to 1865, inclusive.

Mr. Holt: But what time in 1861?

The Master: Major Anderson first started out with the inquiry by limiting it after 1862, during the war; and the examination developed that the witness made it broader, and stated that that was the fact practically after the war. You get it now, do you, Judge Holt?

Mr. Holt: When did the war begin?

Mr. Conrad: April 17th, 1861.

The Master: Is that the date when Sumter was fired on?

Mr. Anderson: April 12, 1861.

Mr. Holt: It goes into the record then that Virginia was out of the Union on the 17th of April, 1861.

Mr. Conrad: She tried to do it.

The Master: Under the authority of the Texas case we do not concede that she ever went out.

Mr. Holt: If she had not tried to do it the banks would have been worth something now. The Confederacy would have lasted about sixty days if Virginia had stayed in.

Q. Mr. Williams, in what currency were the asstes, liquid assets, of the banks represented during that period?

A. I never knew any currency but Confederate currency.

Q. In what currency were their dividends paid in 1861, 1862, 1863, 1864 and 1865?

A. Nothing that I know of, only Confederate currency; I never knew of any other.

Q. In what currency were the deposit accounts kept after 1861?

A. Nothing but Confederate money.

Q. For instance, if a man or the State of Virginia had a million dollars on deposit in any one of these banks, in what currency would it be payable?

A. In Confederate currency.

Q. Their accounts at the beginning of the war, of course, were kept with reference to gold and silver as the standard of value, at the beginning of the war, before the war began?

A. Except in the case of banks, you know, and then they stopped paying in gold; before the War we made no difference between gold and bank notes.

Q. Well, did those deposits and current assets of the banks just gradually drift into Confederate money?

A. Only Confederate money. There was no difference made—nothing said about gold at all.

Q. All payments then of current accounts were made in Confederate money during that entire period?

A. That is my recollection of it, yes, sir.

By the Master:

A. I suppose that would include payments to and payments by the banks?

A. Yes.

By Mr. Anderson:

Q. Please state from your recollection what became of those State banks, the Bank of Virginia, the Exchange Bank of Virginia, the Farmers' Bank of Virginia and the Bank of the Valley of Virginia, if you know—what became of them at the close of the war.

A. My recollection is they all went out near about.

Q. All went to pieces? What do you mean, that they all went out?

A. What is that?

Q. You say that they all went out at that time?

A. All went to pieces, that is all. You know what that is, don't you?

Q. I understand you, I think, sir, very well. State whether they became insolvent, whether they could pay their deposits or their notes in full.

A. Major, they "disappeared like the baseless fabric of a vision, left not a wrack behind" except Confederate money.

Q. Did you have occasion to travel over the State to any extent?

A. No, sir—oh, look here, you are a little trying my memory. What is it you want to know?

Q. I want to know whether you had any occasion to observe the condition of the railroads.

A. Oh, no, I cannot tell you anything on that subject.

Q. What is the style of your present firm?

A. John L. Williams & Sons.

Q. Yourself and your sons?

A. Yes, sir.

Q. Mr. John Skelton Williams is a member of your firm, is he not?

A. Yes, sir.

Q. Your oldest son?

A. Yes, sir.

Mr. Anderson: You may cross-examine.

CROSS EXAMINATION.

By Mr. Holt:

Q. When, Mr. Williams, did the banks mentioned by Mr. Anderson go out or break up?

A. Now look here, you will have to talk a little louder, because I am deaf.

(Question repeated by the stenographer).

A. At the close of the war, sir.

Q. Do you recall the year, in what year?

A. Why the 3rd of April, the whole business, they broke up and went to pieces, in 1865. You recollect what the 3rd of April, '65, meant?

Mr. Conrad: He does not recollect. He was too young.

Q. Was it in 1865 or in 1866?

A. The Confeederacy went up in 1865 on the 3rd of April, sir. I thought everybody on the face of the earth knew that.

Q. When did the banks go up? If the Confederacy went up in 1865, did the banks go up that year?

A. I will tell you, you will allow me now, you are having your fun with me and I will tell you this. Soon after the 3rd of April. Mr. John Minor Botts met old Daniel London on the ruins of the banks. He says, "Mr. London, I am so happy to meet you here in the garden of the Confederacy." Mr. Botts was a great

Yankee man. Then the banks were all burnt up, the buildings, and previous to that, a day or two before that, they had all gone with whatever they had left. I do not know what became of them.

Q. The only question I asked was the date.

A. On the 3rd of April, I suppose you might call it, was the day of their conclusion. Some suits were brought about them afterwards, but that was all that remained of them.

Mr. Holt: Do you gentlemen want to take the position that that is the fact, the 3rd of April, 1865.

The Witness: I would like very much to know what you want to know about.

Mr. Conrad: He was speaking of some suits which were brought.

The Witness: Some of them thought they would make something out of the shares, you know, and several suits I think were brought, but I never heard that any of them got anything from it.

Q. Did any of these banks have in their vaults at the evacuation of Richmond gold or silver?

A. How on the face of the earth could I know, sir; I do not know anything about the vaults and I could not tell you.

Q. And did not the Confederate soldiers rifle those vaults and carry the specie away?

A. You are asking me a whole parcel of questions. About that time we were all in a stir. The town was all on fire, but previous to that, I think the Sunday previous, we were informed that the Yankees—that General Pillsbury was coming, and then it was that everything broke, banks and Confederate officers, they made for Danville, just previous to the 3rd of April.

Q. The banks did the same thing, did they?

A. Yes, they did as far as I know; but why are you asking me things of that sort. I was only in the crowd, I could not tell you any particulars about those things.

Q. Did they make off for Danville too, the banks, did the banks cut out for Danville too?

A. That is my impression, sir.

Q. That is what you mean by that?

A. Yes, sir.

Q. Were you connected with the Northwestern Bank in any way?

A. No, sir.

Q. With the Exchange Bank?

A. No.

Q. With the Bank of Virginia, were you an officer or director or stockholder in either of those banks?

A. I don't think so.

Q. Were you an officer, director or stockholder of the Northwestern Bank of Virginia?

A. Knew nothing in the world about them, don't know anything about them.

The Master: Ask him if he knows who the officers of these various banks were at that time and then whether any of those officers are now living and if so where they are. Excuse me for the suggestion.

Q. Do you know, Mr. Williams, the names of any of the officers or directors of any of those banks in the year 1865?

A. 1865, that would be about fifty years ago, I do not recollect, I do not recall. I run away back in the past and I am a little apt to get things mixed. Old Mr. James Caskey was President of the Bank of Virginia, I think, and Mr. McFarlane of the what do you call it, the Farmers, and John Adam Smith of the—I cannot tell you a thing worth hearing.

Q. Are either of those gentlemen alive now?

A. I think they are as dead as Hector, sir, all of them.

Q. You then cannot tell me who the officers of these banks or any of them were in 1865?

A. I would not undertake to do it, sir, now.

Mr. Holt: I believe that is all.

RE-DIRECT EXAMINATION.

By Mr. Anderson:

Q. Mr. Williams, you were employed by the firm of Lancaster & Company before the war, were you not?

A. Only as a clerk. During the war I was a member.

Q. There are certain quotations here in the Richmond Dispatch of sales of stocks and bonds. Of course you know nothing about them now.

A. Of course not.

Q. Do you know that the reports were made by your firm for

publication in the Richmond Dispatch?

A. Yes, sir.

Q. Do you know anything as to the correctness of those?

A. No doubt if they are in the papers they came from our concern.

Q. Do you know anything as to their correctness?

A. No, sir.

Q. Not now?

A. No.

By the Master:

Q. Was there any such thing as a stock exchange in Richmond in 1860, 1861, 1862 and 1863?

A. Not that I recollect, sir. There was a stock exchange here that started after the war.

The Master: That is all.

Mr. Anderson: Much obliged to you, Mr. Williams.

The Master: Now can you proceed with the cross-examination of Mr. Potter or go on with any other witness?

(At this point Mr. Conrad made a statement which he requested the stenographer not to make a part of the record.)

Mr. Holt: We would be perfectly willing to have Mr. Conrad's statement go into the record as evidence, without his being sworn.

The Master: You may state, Mr. Holt, what you are willing to put in the record as a concession predicated on the statement of Mr. Conrad.

John F. Glenn, called as a witness in behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:

Q. Mr. Glenn, where do you reside?

A. Richmond.

Q. What is your occupation?

A. One of the officers of the Merchant's National Bank.

By Mr. Holt:

Q. How old are you, Mr. Glenn?

A. Well, I suppose anywhere over forty years of age.

Q. Yes, I know, but so was Mr. Williams over forty years of age.

By The Master:

Q. What is your age?

A. 78.

Q. A native of Richmond, Virginia?

A. No, sir.

Q. How long have you resided in Richmond, Virginia?

A. Since 1864.

Q. And what business were you engaged in in 1864?

A. I was a book-keeper in a merchant house.

Q. In the same bank in which you are now an officer?

A. Oh, no; I was a book-keeper in a commercial firm.

By Mr. Anderson:

Q. Where were you living during the war between the States from 1861 to 1865?

A. From 1861 to 1864 I lived in Petersburg, or rather from the time I landed in Virginia.

Q. Are you not a native of Virginia?

A. No, sir.

Q. A native of Ireland?

A. A native of the north of Ireland.

By The Master:

Q. And in 1864 you came from Petersburg to Richmond?

A. Yes, sir.

Q. So that during the whole period of the rebellion you were living in the State of Virginia?

A. Yes, sir.

By Mr. Anderson:

Q. You were connected with business houses during that whole time as a clerk?

A. Yes, sir.

Q. When did you come into the banking business?.

A. In 1866, first of April, 1866.

Q. Were the houses by whom you were employed during the war between the States engaged in the business of buying and

selling property of what was the character of the business?

A. Well, one was a wholesale dry goods establishment and the other was a wholesale grocery and commercial business in Petersburg.

Q. Can you state, Mr. Glenn, from your knowledge of transactions during that period with reference to what currency all current transactions were conducted in during the period of the war in Virginia?

A. Well, all transactions were conducted generally in what was called Confederate currency.

Q. What were the exceptions?

A. Well, I don't know. I suppose that some people may have sold property for those. I don't know that I ever heard of any.

By The Master:

Q. Were general commercial and business transactions during that period so far as you know conducted upon the basis of Confederate currency as the medium of exchange?

A. Yes, sir.

Q. In what currency were accounts with banks and transactions of banks conducted at that time?

A. Confederate currency.

By The Master:

Q. Was there any other universal medium of exchange in the State of Virginia during that time than Confederate currency?

A. Well, some of the cities used currency known as the City of Richmond. debt.

Q. That would be in municipal currency?

A. Yes, sir.

Q. But with the exception of the municipal currencies that may have been current, was there any other universal medium of exchange in Virginia during that time other than Confederate currency?

A. No, sir; none that I ever heard of.

Q. Do you say you never knew of any individual transactions that were conducted on a gold basis?

A. No.

Q. You don't go so far as to say that there may not have been transactions which were predicated upon a gold basis; there may have been individual transactions of that sort, but if they were they were not within your knowledge, is that right?

A. That is right, yes, sir.

By Mr. Anderson:

Q. Were railroad tickets paid for in Confederate money?

A. So far as I know.

The Master: Why do not these general questions cover your whole ground? Excuse me for interfering in the examination. My object was to facilitate.

Mr. Holt: I do not believe it was possible for any one man to know what four hundred million people did.

The Master: All the witness can do is to tell as far as he knows.

Q. From your personal observation what was the condition of the railroads of Virginia at that time, in what condition were they as to repair and condition of cars and tracks?

A. Pretty well worn out.

Mr. Anderson: That is all, I believe

CROSS EXAMINATION.

By Mr. Holt:

Q. Mr. Glenn, over what railroads in the State of Virginia did you travel during the war?

A. I do not think I traveled over any except between Richmond and Petersburg.

Q. What railroad did you use for that purpose?

A. That was the Richmond & Petersburg Railroad.

Q. Did you travel on the Richmond & Danville?

A. I don't remember, I think not though.

Q. How far is it from Petersburg to Richmond?

A. 22 miles.

Q. Then the extent of your travel during the war over the railroads was confined to 22 miles, is that so?

A. Yes, sir.

Q. Was not there a State currency extant here during the war?

A. Yes, what they called Virginia Treasury Notes.

Q. That was in addition to and distinct from Confederate currency?

A. Yes, sir.

Q. And this municipal currency you have described was likewise distinct from Confederate currency, was it not?

A. Yes, sir.

Q. Was there no gold in this country at all?

A. Oh, yes; there was some. I do not know how much, though there was some gold, some people hoarded their gold you know and treated it as a commodity.

Q. Any silver?

A. Well, I suppose there was some silver too.

Q. Most of it was hoarded up in the banks was it not?

A. Well, I do not know about that; I think probably that it was, except that the Confederate government had some gold.

Q. Well did not the Yankees bring any of their money around down here?

The Master: You mean of course prior to the rebellion?

Mr. Holt: Yes.

The Witness: What is that question?

Q. Did not the Yankee soldiers bring any of their money down here during the war?

A. Well, there were places in Virginia that they occupied during the war, and I suppose they did use some greenbacks in paying for anything that they bought.

Q. Well, McClellan's armies used greenbacks, didn't they?

A. Well I do not know, I suppose they did though.

Q. And General Butler's?

A. Yes, sir: I suppose so.

Q. And Pope and Burnside and Banks and Hooker, fighting Joe Hooker?

Mr. Harrison: Butler used spoons.

Mr. Holt: He did in New Orleans, and they were silver too. Well I believe that is all.

By The Master:

Q. Was there such a thing as a Stock Exchange in Richmond then Mr. Glenn?

A. No, sir.

Q. How long has the Stock Exchange been in existence?

A. Well I do not know really. I think it must have been started shortly after the war, a few years after the war.

Q. Well, was there any Stock Exchange during the years 1860, 1861, 1862, 1863 and 1864, in Richmond?

A. As I was not living in Richmond during the first three years of the war I do not know anything at all about it, and I never heard of any at any time during the war.

RE-DIRECT EXAMINATION.

By Mr. Anderson:

Q. Mr. Glenn, you have mentioned that besides the Confederate currency there were Virginia Treasury Notes and notes issued by the cities. The notes issued by the cities were generally denominated shin plasters, were they not?

A. No, I think the little fifty cent and twenty five cent notes were called shin plasters.

Q. I will ask you whether that paper currency, that issued by the cities and that issued by the State of Virginia, passed interchangeably at par with Confederate money or not, or was that State currency at a premium?

A. No, I think not, I think it was on a par.

Q. With Confederate money?

A. Yes.

Q. It passed interchangeably?

A. Yes, sir.

Q. What office have you held in the Merchants National Bank?

A. I have been a book-keeper and a cashier, and I am now second Vice-President.

Q. How long were you cashier of that bank?

A. From 1882 to about three years ago.

Mr. Anderson: That is all.

RE-CROSS EXAMINATION.

By Mr. Holt:

Q. When did the Confederate currency pass out of existence?

A. Well, the Confederate currency passed out of circulation at the close of the war, but the Confederate currency never did go out of existence, because there is some of it stored away now.

Q. I do not mean in existence in the sense of this stuff that we see in the windows around, but when did they stop using Confederate currency?

A. Well, just around the close of the war.

Q. When was that?

A. The 3rd of April, 1865.

Mr. Holt: I believe that is all, your honor.

William H. Lucke, called as a witness on behalf of the Plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Anderson:

Q. What is your full name?

A. William H. Lucke.

Q. What is your age and what is your occupation, Mr. Lucke.

A. 69.

Q. And what is your occupation?

A. I am associated with John L. Williams & Sons in the banking business at present.

Q. Where were you living during the war between the States?

A. In Richmond.

Q. How were you occupied, how were you engaged?

A. Well, at what particular dates do you want? Can you specify?

Q. Well, in 1862 and 1863 and 1864.

A. Well, part of the time I was in the employment of the Confederate Government, up to about 1863, I think; at that time I was with Lancaster & Company, brokers, stock brokers.

Q. Did you remain with Lancaster & Company from 1863 to the close of the war?

A. Yes, sir.

Q. What was the currency which constituted the medium of exchange and the standard of value at that time within Confederate Virginia?

The Master: In all commercial and business transactions.

Q. In all commercial and business transactions?

A. Confederate money.

Q. Were the dividends of the banks paid in Confederate money?

A. I think so; I cannot say postively about collecting any dividends, but everything of the kind was in Confederate money.

By The Master:

Q. Does that mean, Mr. Lucke, that when the banks had disbursements to make they made them in Confederate money?

A. Yes, sir.

Q. And then when they had collections to make they also made them in the same Confederate money?

A. That is my recollection.

Q. That is all the transactions on either side, payments by parties to and payments of parties from were all made in Confederate money?

A. Yes, sir.

Q. And this State currency and the municipal currency, was that interchangeable at par with the Confederate currency?

A. To the best of my recollection it was.

By Mr. Anderson:

Q. Mr. Lucke, Lancaster & Company, what was their business?

A. Stock brokers.

Q. Did they do a general banking business too?

A. No, sir; they did not do a general banking business, just stock brokers.

Mr. Anderson: You may cross-examine.

The Master: Just one question.

By The Master:

Q. Is it not in accordance with your recollection that there was no stock exchange in Richmond during that period?

A. There was not.

The Master: That cleans up that schedule absolutely so far as the stock exchange is concerned.

CROSS-EXAMINATION.

By Mr. Holt:

Q. How old were you on January 1st, 1861?

A. 16 years old.

Q. What currency did you have here in Virginia then?

The Master: That is three months before the war opened, January 1st, 1861.

A. The notes of the various banks of this State, and gold and silver currency too at that time.

Q. You did not have Confederate currency then?

A. No, sir.

Q. When did Confederate money first come on to the stage?

A. I cannot give the exact date of that, but very soon after the Confederacy was formed.

Q. Was it in 1862?

A. I do not remember that. I cannot say when it first appeared in circulation.

Q. Were you, either in 1861, 1862 or 1863, connected with any bank in the City of Richmond?

A. No, sir.

Q. You do not know then personally whether they received gold on deposit during those years?

A. No, sir; I do not.

By The Master:

Q. What business were you engaged in, in 1861, 1862 and 1863?

A. Well, I was a boy then. First I was in an insurance office, then as I say, I was employed by the Confederate Government.

Q. In what capacity?

A. I was a clerk in the medical department.

Q. And then from that you went into the Lancaster concern?

A. Yes, sir.

By Mr. Anderson:

Q. In 1863 you went with Lancaster, was it not?

A. Yes, sir.

By Mr. Holt:

Q. Where was the Farmers' Bank of Virginia located?

A. On Main Street between 10th and 11th.

Q. How many branches did it have?

A. I do not know.

Q. And where were those branches, such of them as you do know about, located?

A. I do not remember.

Q. Were any of its branches located in the City of Richmond?
A. I think not. The mother bank was here.
Q. Where was the Bank of Virginia located?
A. Right next to the Farmers' Bank.
Q. How many branches did it have?
A. I do not know.
Q. You do not know where they were located either?
A. No, sir.
Q. Where was the Bank of the Valley located?
A. My recollection is Winchester; I am not certain about that.
Q. It was not in Richmond at all was it?
A. No, sir.
Q. Did you know anything about it?
A. No, sir.
Q. Where was the Exchange Bank located?
A. On Main Street between 11th and 12th.
Q. Did it have any branches?
A. I do not know, I cannot remember.
Q. And if it had of course you do not know where they were located?
A. No, sir.
Q. Do you know the location of the Northwestern Bank?
A. No, sir.
Q. It was not in Richmond, was it?
A. It was not in Richmond.
Q. How many branches did it have?
A. I do not know.
Q. You do not know where they were either?
A. No.
Q. Where was the Fairmount Bank located?
A. I do not know.
Q. It was not in Richmond, was it?
A. No, sir.
Q. Did it have any branches?
A. No, sir; I do not know if it had any branches or not; it was not in Richmond.

Mr. Holt: I believe that is all.

Mr. Conrad: I am going to make another statement, not as a witness—the Confederate Government issued Confederate cur-

rency at Montgomery, Alabama, before Virginia went into the Confederacy.

The Master: We have reached the usual hour for recess. Now, we ordinarily take a recess for an hour and a half. It seems to me we are getting pretty close to the end of this case, and I want to close it to-night if I can. That lets us all get away. I was going to suggest that as far as I am concerned I would rather have a short recess of an hour. And even if we do not bother with lunch, if we can run along through until five or six o'clock, and with reasonable convenience clean everything this afternoon—now it may be that counsel can tell me whether we would be likely to clean up without any difficuty if we have the usual intermission. Of course I won't make this a short intermission unless it is agreeable to all concerned.

Mr. Harrison: We all share your feeling about getting away to-night, but we have some schedules that are not yet completed, and the chances are that we are going to run over into the morrow.

The Master: So far as these schedules are concerned, I think we could make this arrangement—

Mr. Robinson: Could we not have them handed in afterwards?

The Master: Yes, and go into the record, subject to their being agreed to by the other side. If that is all, I do not think that ought to delay us. Of course if you have anything that you want to explain about them, that is another thing.

Mr. Holt: We may not be able to understand their schedules. We might want to cross-examine upon them.

The Master: I do not insist on it.

Mr. Anderson: If the schedules are ready we can get through this afternoon.

Mr. Holt: I am ready to go right on now without an adjournment.

The Master: How would it do to suspend—if we can clean up everything I want to clean it up this afternoon; my own notion is, say we spend half an hour and come back and use the other hour that we would ordinarily use for lunch in the hope of being able to clean up and get through. Is that agreeable?

Mr. Harrison: Suppose you suspend for an hour?

The Master: I will make it an hour. We will suspend until two o'clock.

At this point a recess was taken until 2 P. M.

AFTER RECESS.

The Master: I place in the record the additional information that Mr. Hillman was requested to get for me this morning, in relation to the Richmond, Fredericksburg & Potomac Railroad. A copy of this has been handed to counsel on either side. This may be incorporated in the record.

The statement furnished by Mr. Hillman is as follows:

Memo to accompany Hillman Report on R. F. & P. R. R. Company.

Cost of Road & Property to Sept. 30, 1848.....$1,478,916.33
(Page 22 Report of 1848—Vol. of Reports 1835 to 1851 Inclusive.)

Cost of Road & Property to Sept. 30, 1849.....$1,483,199.94
(Page 9 Report of 1849—Vol. of Reports 1835 to 1851 Inclusive.)

Cost to Sept. 30, 1855:

Richmond to Acquia Creek.....	$1,531,238.40	
Net Cost Superstructure	236,430.60	$1,767,669.00

(Page 418 of Report 1852 to 1873).

N. B.—Observe change in date of report following:
Cost to March 31, 1858—

Richmond to Acquia Creek	$1,531,238.40	
Superstructure	452,018.55	$1,983,256.95

(Page 466 Reports 1852 to 1873.)

Mr. Harrison: These schedules that Mr. Robinson has called my attention to are argumentative. He suggested to me that you

had suggested that they might be handed to the other side and incorporated in the briefs. I would much prefer to have them in the record. There is nothing about which I imagine there is any necessity for cross-examining, but of course I am not undertaking to dictate to the other side how they shall manage their case. But as we have got all these in the record, I would just like to have the record complete.

Mr. Hogg: We introduced the case of Virginia vs. West Virginia, reported in 11th Wallace, and we did that for the purpose of showing when the suit was instituted and its objects, and we can stipulate on that exhibit.

Mr. Harrison: I cannot imagine that there is any occasion for counsel on either side to be stipulating authorities into the record. We may refer to a number of authorities. I think that may be done as a matter of course.

Mr. Hogg: I did that to show when the suit was instituted.

The Master: I am not going to take any time on these stipulations that may be made, because this record shows, in connection with every exhibit that has been put into this case that is susceptible of a stipulation, that the instruction is that the exhibit is in and is to be printed in extenso unless the parties themselves agree to a stipulation that will eliminate the necessity of the printing of the exhibit. Now that ends it as far as this hearing is concerned.

Mr. Holt: That is up to the parties.

The Master: That is the end of it as far as this hearing is concerned. And if the parties in the interest of narrowing up this record and reducing cost and expense, want to make stipulations about those things, they can do that after the hearing. Now, Judge Holt, the witness is ready for your cross-examination. I am advised by the other side that they have finished their oral testimony, except as they may have something additional from Mr. Potter, in addition to the schedules. That is right, is it not, Mr. Harrison?

Mr. Harrison: Yes.

The Master: I have this suggestion to make. Of course you do not need to follow this. Of course it is an absolute demonstration here now that there was not any stock exchange in Richmond during the period in controversy, and I would strike out all the examination and cross-examination on that subject.

Mr. Lilly: It may be that it ought to be affirmatively shown as a matter of law, your Honor.

The Master: As far as I am concerned I have affirmatively shown it from three witnesses myself. Unless there is somebody that can show the contrary, you may be certain that it will be found that there was not any stock exchange. That is all you want, is it not?

Mr. Lilly: It might be material to show that.

The Master: I am going to find on this record, if it is material, that up to 1866, which covers all these dates in controversy, there was no stock exchange in Virginia.

Mr. Anderson: That is in accordance with the truth.

The Master: You might save half a dozen or ten pages of this record by striking out all that testimony about the stock exchange, and then put in a stipulation.

Mr. Anderson: It runs through it so.

The Master: The finding will be that there was no stock exchange, and the result of that of course is that these sales were sales from brokers' offices so far as they were sales.

Mr. Harrison: Quotations that were advertised by the local brokers who were in business in Richmond.

The Master: Well, I do not know about that, I suppose the strict statement of that is that they were sales that were reported by the brokers to the papers as a matter of daily news.

Mr. Lilly: The evidence shows that it was mostly bids.

The Master: So far as they show anything they simply show that they were reports made by the brokers as a matter of current news to the newspapers.

Continuation of the cross-examination of

ARTHUR G. POTTER.

By Mr. Holt:

Q. Mr. Potter, you have filed an exhibit upon Class C and marked it No. 3. Take the first item thereon, Orange & Alexandria Railroad Company, loans, you have set down under the column marked par the sum of $745,341.48, and in the same line and under a column marked par the further sum of $129,365.83. Also under the same heading cash received $125,556.48. What do those three items represent?

A. You are talking about the first page, the summary?

The Master: Yes, the Orange & Alexandria, the first item. He is talking about the first two pages of Class C, and the item No. 1, Orange & Alexandria loan. His question is what do those three items represent.

The Witness: It represents a total of $398,670.50.

Q. It represents what?

A. If I get your figures right—

By The Master:

Q. You have not got the figures right. The question is this, that you have got under three headings, par $745,341.48, par $129,365.83, and then $125,556.48. What do those three items represent?

A. The total face value of the recovery by Virginia for the stock and the loan of the Orange & Alexandria Railroad Company.

By Mr. Holt:

Q. Where do you get your evidence that Virginia received $125,556.48 cash on that loan?

A. The total amount of cash that the State received was $188,179.26, of which a part applied to interest and the balance applied to the loan. It is a deduction from the facts shown in the exhibits of Mr. Hillman.

Q. From what book and from what page of that book do you derive the $125,556.48 cash item?

A. It does not appear on that item. There is no place in the books of Virginia where that particular item is given, but if you will refer to Mr. Hillman's exhibit under Orange & Alexandria you will find that there were $348,179.26 received in payment on this loan, part of which was in bonds, namely, $188,000, and the rest in cash.

By The Master:

Q. Where do you find that exhibit, in the printed exhibits or is it the 1863 list?

A. On page 17 of the exhibits.

By Mr. Holt:

Q. What exhibit is it?

A. Defendant's Exhibit 3, Asset 1.
Q. Is that 1863 or 1861?
A. 1861, page 17 of the printed exhibits.
Q. What page of the printed record?
A. 17 of the exhibits.

By The Master:

Q. See if I understand it. You say that you get that result of $125,556.48 by taking those items and adding them together and deducting that from the total, representing the amount of cash?

A. Yes, that gives the total amount of cash paid on account of principal and interest up to the date when the loan was $212,844.

Q. Up to the date when there was a balance left due of $212,-844?

A. Yes. Now, it is a matter of calculation to determine how much of that applied to interest and how much to principal, but it is all there in Mr. Hillman's schedules.

Q. And you get your information from his schedule?

A. No. I had practically the same information before and have verified his. I have conceded that his figures here are right.

By Mr. Holt:

Q. I know, but does that exhibit of Mr. Hillman show the receipt on that loan of any cash at all?

A. Why, yes.

Q. Well, where is it shown? I do not so understand it.

A. The first item, October 20th, 1862, $10,071, that probably applied all to interest. The next, October 20th, 1862, $20,000.

The Master: Now Judge Holt's suggestion is that exhibit of Mr. Hillman does not show that those payments were made in cash, and that is true, so that you cannot get the information from the exhibit *per se* that those payments were made in cash; now he wants to know any payments that were made in cash. That is right, Judge Holt?

Mr. Holt: Yes.

The Witness: This exhibit says paid, December 31st, 1864, $14,000. Next to that comes an item, or second from that comes an item, paid in State bonds and interest, $150,037.73. The first one is not designated as a payment in bonds, and I have proved that it was a payment in cash, from the original records.

By The Master:

Q. While he does not denominate it cash, you make that inference by reason of the fact that he specifies the others as bonds, and you say you have verified that from the original record?

A. Yes, sir.

Q. So that you know that all the payments except those mentioned in bonds were payments in cash, is that right?

A. Yes, sir; the only way that this $125,000 can be derived is to apply the portion of the total amount here which is applicable to interest, and the balance of it applies to principal.

By Mr. Holt:

Q. What is the sum total as shown by you received upon that loan?

A. The sum total shown in my exhibit covers both the loan and the stock; it is not divided between the two.

Q. On your Exhibit No. 3?

Mr. Harrison: That is Class C.

The Master: Yes.

Q. What is the total of the three items to which I have called your attention? I will try it that way.

A. $441,662.98.

Q. That would be impossible, Mr. Potter, seven hundred and forty-five thousand and some dollars added to one hundred and twenty-nine thousand and something, plus one hundred and twenty-five thousand would make more than $441,662.98.

A. Yes, sir.

The Master: He wants to know where you get that figure.

Mr. Holt: What I want to know, before the reduction what the sum total at par received upon that loan was.

The Master: Add those three items right up.

The Witness: Yes, sir. $1,000,263.79.

Q. Now look at page 18 of the printed exhibits, Defendant's Exhibit No. 3, Asset No. 1, and tell me what the total received on account of that loan was, as shown by that exhibit.

A. I do not know what that means, that number 6.

Q. Does it not appear there that the sum total is $1,137,906.99?

A. Yes, but I think the difference is accounted for by the fact that there was interest accrued on the bonds, and I have not taken that up in my schedule.

Q. That is exactly what I am coming to. I have asked you what the sum total shown by the Hillman exhibit is, and what the sum total shown by yours, and then I will get at what I want.

A. On page 18 it says paid as follows—I do not know whether it is added together or not.

The Master: Do not stop to read the details. Give the aggregate.

The Witness: I cannot do it until I see what it means. I is $1,137,909.99; if that is the total, under the heading payments.

Mr. Holt: That is the way we understand it.

The Master: Well, it is the way I understand it.

Q. Now what is the explanation of the difference between your aggregate and his?

The Master: Something like $137,000 between the two. Now where is it and why for?

Mr. Holt: That is it.

The Witness: There is a difference in the amount of the bonds surrendered and the interest thereon, as shown by certain records of the State of Virginia. The Board of Public Works journal shows one amount, and the Sinking Fund register and the Funding register show another amount. And I referred this matter to Mr. Leitch, in Mr. Hillman's absence. He took the record of the Journal of the Board of Public Works, but I think the more accurate record is the Sinking Fund, and I think that accounts for the $37,000 difference.

The Master: It is $137,000 if I remember right. You had $1,137,000, and you have $1,000,000, so that there is a discrepancy of $137,000. If he cannot do that right off I will suspend a little later for a half hour to give him time to look those schedules over.

Mr. Holt: The discrepancy is established; I have asked him now to explain it, and he has said there are two different accounts given of it.

Q. Is not the explanation this, in part if not wholly, that you have not added into your payments the accumulated interest that was due at the time of the settlement, which was likewise settled as well as the principal? Is not that the explanation of it?

A. No, sir; that is not the explanation of it. If you will permit me I will explain how I arrived at a balance between Mr. Hillman's figures and mine. I have taken the par value of the

stock and the balance of the loan as stated by Mr. Hillman, with which I agreed. I showed that there was received State bonds and interest and cash, so much, and there was a computation of interest on that loan for anticipated settlement of $116,959.62. The total of the items that I have used agrees exactly with the balance of the loan shown by Mr. Hillman and the par of the stock. I start with that point.

By The Master:

Q. Where do you separate, where do you get the $137,000 away from him?

A. I have a note here, "West Virginia relies on Journal entry of October 18th, 1872, in the Board of Public Works, Journal D, page 180, showing interest $186,548.49." The accumulated interest seems to be more accurately stated in the funding transaction on which new bonds were issued, $155,947.19, resulting in the difference of $30,601.30. There are several details in which we differ. I mean, they rely upon one record and I rely upon the other. There is no difference in the net result, I do not think, because the bonds themselves are not in dispute except—yes, the bonds are in dispute. There are some bonds that they have not included in the total recovery that I have included, and I rely upon the Sinking Fund Journals and the transactions shown there.

By Mr. Holt:

Q. Were not the actual settlements made and recorded on Journal D?

A. No; I believe that Journal D was practically discontinued at the time of the war and the entries that followed in Journal D after the war were made in an effort to sort of balance up or straighten up the old books of the Iuternal Improvement Fund. They are not complete in every detail, and I do not think the books of the Second Auditor were ever balanced after the war, so that those journal entries in there are not specific in my opinion.

Q. Will you have Journal D brought in please so we can see just what it does show. Now, you have given no note on any of your exhibits, have you, to indicate the book, page or anything. We are just fighting around in the dark without data of that kind.

A. I believe that in all of these except Orange & Alexandria we are using the same figures that you are using in your exhibits, and having called the attention of the accountant on the other side to the difference in those bonds, I did not think it was necessary.

Q. My question was whether this exhibit of yours or any of your other exhibits shows the sources of your information.

A. No, sir.

Q. They do not?

A. No, sir.

The Master: That is inadvertent probably. The third page of the first exhibit does show the source, the third page of Exhibit 1, Class A, states: "Copied from Second Auditor's Report of December 1, 1871, Table B, page 9." I do not suppose that could strictly be understood not to be a reference to the source. In the main I think Judge Holt is correct.

Mr. Holt: That was our difficulty in checking last night. Mr. Potter was busy with other schedules and we had no reference to which we could go for the purpose of testing him at all.

The Master: Certainly.

By the Master:

Q. The fact is that with very few exceptions the items contained in your schedules do not indicate on the schedules the source from which they are derived. I suppose that is true, isn't it?

A. Yes, sir; that is true. I did not understand that it was necessary to have those references.

Q. It does not make any difference what you understood about it, as far as this question is concerned. The question is as to the fact in the first instance, and the fact is that as a rule and in almost every instance you did not refer to the original sources. Of course you, from your point of view, had a good reason therefor but the fact remains.

A. That is true.

(At this point Mr. Robinson made a statement which he requested the stenographer not to make a part of the record.)

Q. The only computations you intended to cover by these schedules are the figures entered in the reduction of the various

items to their market value predicated upon what you found to be as to their price at which they were sold and quoted?

A. Yes, sir.

Q. You did not intend to go far enough to show the total amounts that may have been received on account of various securities? The total amount received covers of course principal and interest.

A. With the exception of interest.

Q. When a bond is received the bond and interest go to make up the amount of the payment?

A. Yes, sir.

Q. I take it that the total is the bond and interest?

A. Yes, sir.

Q. That is what I mean. You did not undertake to show the total amount received?

A. No, sir.

Q. Because if you did it would have been necessary to have included the interest?

A. Yes, sir.

Mr. Holt: That illustrates the point we make upon the schedule. It is based upon evidence of settlements made and does not show the full settlement.

The Master: That is the criticism of the schedule?

Mr. Holt: Yes, sir.

The Master: I understand it.

By Mr. Holt:

Q. Then as I understand you the accumulated interest up to the date of the settlement was paid but not included by you?

A. I don't understand that it was paid, no. The interest applied as a payment against the State's holdings.

Q. Well, I mean the loan with the interest on it was paid in that way.

A. Yes, sir.

Q. Now, if you were to put that interest in added to your principal, the statement would agree with Hillman's exhibit?

A. Yes, I believe it would in every instance.

Q. As a matter of fact, in the case of the Orange & Alexandria Railroad, would there not be a difference of about $200?

A. I don't know whether there would or not.

Mr. Holt: Never mind, we will not go into that.

The Master: If you wish it I will have him make that computation outside, that is, I won't stop now, but he may make it outside.

Mr. Holt: Very well, make it.

By the Master:

Q. Bear in mind, Mr. Potter, that you are to have that computed and figured, and you better come in with the details of it so that if they want to know what the details are you will be able to show it. Do not stop now to figure it out, but you are to figure it out.

By Mr. Holt:

Q. Did you allow in these items the discounts for anticipated payments?

A. No, sir.

Q. That is another difference, isn't it?

A. Yes, sir.

Q. I believe you may look now on that book we have caused to be brought in a moment ago, and we will see what the interest there is.

Mr. Holt: I am not going to pursue that detail. This is illustrative.

The Master: I understand. I understand the real question to be whether these are the original entries or whether this was written up afterwards; is that the point?

The Witness: This entry is dated October 18, 1872.

By the Master:

Q. And relates to a transaction of what date?

A. Under an Act of March 28th, 1871, entitled an Act directing the Board of Public Works to sell the State's interest. That is a general Act covering all of this. I presume that this October 18, 1872, is the date approximating the date of this settlement, which reads as follows: "The amount on the 28th of March, 1872, was as follows, balance of principal due on account of loan, $212,844.94; interest on same to date $43,510.92; 17,490 shares of stock $874,500; total $1,130,855.85." The account on the 18th of October 1872, adds the interest from the 28th of March, 1872, to the 28th of October, 1872, on the $212,844.94, total $7,050.11, brought down

$1,137,905.97. That is the grand total of the claim.

By Mr. Holt:

Q. That is principal and interest?

A. Principal and interest.

Q. Now, turn to page 18 of the exhibits, printed record, and tell us whether or not that same total does not appear in the Hillman exhibit.

A. Yes, sir.

By the Master:

Q. Except the discrepancy of $1.02?

A. He shows that exact figure, $1,137,905.97.

The Witness: (Reading). In consideration of the above sum the following State securities were received. In State bonds and other certificates of debt, old coupons, $74,500; new coupons, $53,000; old registered debt, $665,016.48; new registered debt, $41,882.40; total, $834,398.88. Interest due to 1st July, 1871, $151,715.87; interest due from 1st July, 1871, to date, October 13th, 1872, $34,832.62. Rebate or discount allowed for anticipated payment, $116,957.58.

By Mr. Holt:

Q. Coming now to the Richmond & Danville Railroad Company, you have under the same headings to which attention has been called in the case of the Orange & Alexandria Railroad Company: $58,200, $460,017.98, $16,000, $31,960.41, $352,399.46 and $33,600. Do those six items represent the full amount that was paid to the State of Virginia for her ownership in the stock of the Richmond & Danville Railroad Company?

A. Yes, sir.

Q. Can you tell me what those items aggregate?

A. As we have computed it, it is $460,777.85.

By the Master:

Q. Those six items do you mean?

A. That cannot be right.

Q. You must be mistaken about the question. Two of them amount to more than $800,000.

A. I was relying on my assistant to take them down, and he did

not get them down right.

Mr. Robinson: Then, if Your Honor please, we concede that in every case here there is no interest taken into consideration in these computations. That was not the basis on which the schedule was made up. The schedule was made up on the market values only, and the market value is computed on the par, and in every instance no interest is taken into account at all.

The Master: That has already been stated. Of course if it is so it is open to them to cross-examine upon it from their point of view.

The Witness: $952,177.85.

By Mr. Holt:

Q. Turn to page 20 of the defendant's exhibits and see what the total tnere appears to be.

A. Under column, disposed of for?

Q. Yes, that is right.

A. $1,085,636.57.

Q. What is the difference in amount between the two?

The Master: Do you wish to go through the schedule in the same method?

Mr. Holt: Yes.

The Master: Because I will have some accountant make the computations so that we don't have to wait.

Mr. Holt: I will ask a general question as to the others.

The Witness: The difference, I have not got the exact figure, Judge, I would have to sit down and work it out. But I am sure the difference is the interest and the recovery for abated interest. I have balanced my figures with Mr. Hillman's total.

Q. Then the discrepancy between the two is accounted for by the failure to include the interest settled and the interest abated—the failure to include them in your schedule?

A. Yes, sir.

The Witness: May I amend that answer please?

The Master: Yes.

The Witness: The difference is the exact amount of interest on the bonds, the abated interest—or rather the bonds received for the recovery under the law suit for this abated interest are included in my total bonds here in this schedule.

Q. So that in this particular item the difference is the omission of interest?

A. Yes, sir.

Q. And the abated interest you have included?

A. Yes, sir.

Q. Now, turn, under the head of loan, to the Richmond & Danville Railroad Company and tell us, please, where you get your $126,903.34.

A. The total amount of bonds surrendered by the Richmond & Danville for that loan was $565,803.34, of which $126,903.34 are stated in the Sinking Fund records—I have not the page here—to be past due coupons, and $438,900 are State bonds.

Q. Who turned the $126,000 item into the Sinking Fund?

A. The Richmond & Danville Railroad.

Q. Could you give us the page for that transaction?

The Master: That is the page of the Sinking Fund account.

Mr. Holt: Yes, sir.

A. No, I cannot give you that.

Q. Give it to us a little later, please.

A. Yes, sir.

The Master: Look that up and put it in the record. And hand it to the other side when you find it.

Q. Mr. Potter, coming to the third item, Richmond & Petersburg Railroad Company stock, under the column par, $369,486.67, and under the other column of par $161,771.03, neither of those items, as I understand you, include the interest that was settled?

A. No, sir.

Q. And it is likewise true in the case of the Virginia Central Railroad Company?

A. Yes, sir.

Q. That you did not include interest?

A. Nor, sir; no interest included.

Q. Was interest included in the Blue Ridge Railroad Company items?

A. Yes, sir.

Q. Interest included?

A. Interest was included in the settlement.

By the Master:

Q. No, but in this statement, in this schedule.

A. In this statement, no, sir.

The Master: Pay better attention then to the question. You

have already stated that it was not included in any of these items. Now, you are asked about the item in detail, and you did not get the question, Mr. Potter. The question was whether interest was included in this statement.

The Witness: It is not.

By Mr. Holt:

Q. Can you tell me what the interest settled was, what it amounted to?

A. $50,714.64.

Q. That is the Blue Ridge Railroad Company?

A. Yes, sir.

Q. I see you have under the head of cash in the Blue Ridge Railroad Company, $8.96. How was that paid?

A. It is described in Mr. Steger's report in 1864 as uncollected check now on hand, $8.96.

Q. In showing the amount received by the State of Virginia for its stock in the Alexandria, Loudoun & Hampshire Railroad Company, did you include interest? That seems to have been, Mr. Potter, a single cash item of $50,682.40.

A. This cash is the face of the three notes given by the Alexandria, Loudoun & Hampshire. The accumulated interest is not shown in this case.

Q. The accumulated interest is not shown?

A. No, sir.

Q. That is interest that had fallen due at the date of the settlement?

A. That is true.

Q. Is the same true with respect to the loan by the State of Virginia to the Winchester & Potomac Railroad Company?

A. There is no interest included in my schedule with respect to that.

By the Master:

Q. Is there any interest included in any of this schedule?

A. No, sir.

By Mr. Holt:

Q. Do you know what the interest was in the case of the Winchester & Potomac Railroad Company loan?

A. $7,387.22.

Q. Do you know what the interest was as settled upon the loan to the Virginia & Tennessee Railroad Company?

A. I do not understand that the Virginia & Tennessee settled for this loan.

The Master: That is not the question. If you know anything about the interest, answer the question.

The Witness: Do you refer to the million dollar loan?

The Master: Yes.

Mr. Holt: Yes, that is item 8.

The Master: If you know anything about the question of interest, say what you know about it and all about it.

The Witness: No, I do not know anything about the question of interest without referring to my papers. I cannot testify from memory as to it.

Q. Then I believe that it is admitted by you, as stated by Mr. Robinson, that in stating upon this schedule the amounts received by the Commonwealth of Virginia, either for the stocks therein sold by her—described as sold by her—or in the settlement of the loans made by her, you did not embrace the accrued interest.

A. No, sir.

Q. That is true with respect to the whole schedule?

A. Yes, sir.

Q. Have you the loan on this schedule anywhere made by the State of Virginia to the United States Government?

A. No, sir; the amount of the claim is there; the amount of the loan is not.

Q. Well, what do you mean by the item $581,800?

A. That is the par of the bonds, Virginia State bonds, received back from the United States Government.

Q. In settlement of that loan?

A. In the adjustment of this counter account.

Q. What was the total principal and interest involved at the date of the settlement between the Virginia and the United States Governments?

The Master: He means by that in 1894, although the settlement was not made until 1903.

A. The account is stated in the records of the Auditor as $1,723,583.73, that is the total of principal and interest of this claim.

The Master: As of that date?

The Witness: Yes, sir.

Q. Now, then, the United States Government at that time settled that claim with Virginia, both principal and interest, did she not?

A. She did.

Q. And yet you have set the matter down there as being $581,800 instead of $1,130,821.31.

A. I do not concede the instead of, but I put down $581,800 as bonds received.

Q. The $1,130,821.31 shows the full amount of the claim of Virginia of that date, principal and interest, does it not?

A. Yes, sir; to February 11th, 1894.

Q. I am mistaken about the $1,130,821.31: that is calculated upon 1861. The total of principal and interest of the claim of Virginia against the United States as of the date of settlement seems to have been $1,723,582.53.

A. That is what I have just stated.

Q. Yes, but it was my mistake. Now, instead of setting that sum down you have put down $581,800?

A. Yes, sir.

Q. And then you fastened upon that as I understand your exhibit a market value of $151,268?

A. Yes, sir.

Q. And then in the last or total column you carried forward the same amount, $151,268?

A. Yes, sir.

Q. What do you mean by that entry?

A. The market value of the old unfunded bonds at the nearest date I could find a quotation was 26, under date of January 1st, 1893, and the $581,800 is reduced at 26.

Q. Well, now, Virginia received bonds, received her own bonds as I understand it from the Government of the United States in settlement of that loan, principal and interest?

A. Yes, sir.

Mr. Anderson: The fact is, Judge, that one claim was set off against the other.

Mr. Holt: I understand that.

Q. She owed the Government of the United States the bonds, didn't she?

A. Yes, sir.

Q. And the Government of the United States owed her the principal and interest of the loan?

A. Well—

The Master: Virginia owed the bonds with accrued interest, that is right, isn't it?

Mr. Holt: Yes, sir.

Mr. Anderson: There is a difference about the facts.

The Master: He understands about that, but he has asked it for another purpose. Virginia owed the United States at that time those bonds with the accrued interest thereon.

Mr. Holt: That is it, exactly.

The Master: Which amounted roughly to $1,700,000 in round figures.

Mr. Holt: Yes, and the Government of the United States owed her at the same time a loan and interest thereon amounting to $1,723,582.53.

The Master: And the little balance of cash which the United States paid to balance the matter up, $5.50.

Mr. Anderson: There is this difference between the two claims, that Virginia recognized that she owed the United States $581,000, but the United States denied that she owned Virginia a cent of it for thirty or forty years.

Mr. Holt: I would rather not be interrupted at this point with an argument on the matter, because I want to get the facts.

The Master: That is right.

By Mr. Holt:

Q. Then each Government paid its debt, that is, they offset one against the other, did they not?

A. Yes, sir.

Q. Well, then, Virginia by surrender of this loan to the Government of the United States settled an equal amount of her own bonds, principal and interest?

A. An equal amount did you say?

Q. Yes, an amount equal to the loan.

The Master: An equal amount of the bonds, principal and interest.

The Witness: An amount in excess.

The Master: Well, $5.50.

The Witness: You mentioned as to principal.

Q. Principal and interest, the question is, whether Virginia did not settle an amount of her bonds, principal and interest, aggregating that amount except this $5.50 cash.

A. Yes, sir.

Q. Well, now, Mr. Potter, if you owed me a thousand dollars and I owed you a thousand dollars and we should meet and settle and offset the one against the other, why should you then thereafter in making up an account or statement showing the amount of money that you received from me or anything else discount it in any way by showing the market value of the security that evidenced my debt to you?

A. I would not.

Q. You would not?

A. No.

Q. Well, you have done it in this schedule, haven't you?

A. No, sir, because the $298,000 is not a recognized claim; it was not recognized by the Government as a claim.

Q. The Government of what?

A. The Government of the United States.

The Master: They recognized it when they paid it.

The witness: By settlement.

The Master: That does not make any difference. They recognized the liability when they paid it.

The witness: The Second Auditor's report states that the United States would never have paid it unless they had these bonds in their possession.

The Master: That all may be, but they paid it, and they recognized the claim when they paid it. We are not to understand that the United States made somebody a present of $1,700,000.

Mr. Anderson: It was a compromise settlement, there is no doubt about that.

The Master: Yes, but that does not change the fact that the United States recognized that amount of liability to Virginia and they paid Virginia in Virginia bonds with accrued interest, and now of course Mr. Potter is to explain why he makes this entry here under these circumstances.

Mr. Robinson: It is the market value of the securities, that is all.

Mr. Holt: I understand that.

Mr. Lilly: Those very bonds and accrued interest were charged in the debt, January 1st, 1861.

Mr. Harrison: No interest was charged on those bonds on the debt.

The Master: The suggestion is that these bonds were made at par a part of the aggregate of thirty million dollars indebtedness.

Q. I will ask you whether or not the Virginia bonds received by the State of Virginia in the settlement of her claim against the Government of the United States were not embraced in the debt at par that the Supreme Court of the United States has said we should pay a part of at par.

A. Yes, sir, it is so stated in our schedule.

Mr. Harrison: It is so stated in the record.

The Master: Is there anything that appears here that shows when the United States acquired these Virginia bonds? Does anybody know anything about that? Non constat the United States may have paid one hundred cents on the dollar and Virginia may have paid twenty-five cents on the dollar. I simply suggest that. Proceed.

Q. So then your exhibit is intended to show an account of your market value calculations that Virginia only received for this asset in the shape of a claim against the Government of the United States the sum of $151,268, is not that the object of the exhibit?

A. That is the intent, to show the par value, the market value at that time.

Q. And West Virginia if a settlement should finally be had upon that basis, upon the statement of our contention, would be entitled only to 23 1-2 per cent. of $161,268, instead of 23 1-2 per cent. of $1,723,582.52, isn't that true?

A. That is the intent of the schedule. Personally I would not admit it at all.

Q. That is the object of the schedule.

A. Yes, sir.

Q. I know you would not agree to it, as far as that is concerned. Would you deem that equitable to make us pay par on bonds and get credit where we happened to own some of the same bonds not for par but for ten cents on the dollar?

Mr. Harrison: If your Honor please, we object to that question. There is no use of addressing an argumentative question to the witness as to what his opinion may be about a thing.

The Master: I allowed a question of that same character to be propounded to Mr. Hillman.

Mr. Harrison: I do not remember propounding any question of that sort to Mr. Hillman. The schedule is made up as he was instructed to make it up. He has put it in at the market value for whatever it may be worth, and whether we will contend for the market value or—

The Master: I think on cross-examination I am not going beyond the limit to allow him to answer that question. There was more or less general examination of that character with reference to Mr. Hillman on that line; but whether there was or not, I would not want to say it was beyond the legitimate scope of the examination of an expert witness for what it may be worth.

Q. (Question repeated.)

A. I do not know that I can answer that question; I do not understand it.

Q. Would that be common sense or justice is what I mean?

The Master: I do not suppose that makes your question any more clear.

Mr. Holt: We will let the answer stand as it is.

The Master: Were you going to pass from that item?

Mr. Holt: Yes.

By the Master:

Q. What did you do with the interest that was accumulated on these bonds, on the basis of reduction to par value, the interest being in the neighborhood of $1,200,000. I do not see any mention made of interest, but as a matter of accounting, if you predicated the bonds on this par value what do you do with the accrued interest of this $1,200,000?

Mr. Holt: Throw that away altogether?

The witness: I did not understand that you were addressing the question to me.

Q. Oh, yes. What did you do with the interest?

A. Nothing. I have not considered it.

Q. Well, what would you do with it in this case as an accountant?

A. In this case I do not think it ought to be treated at all. It is a counterclaim.

Q. That does not answer the question at all. In stating this account if you predicated a market value upon the stock that is a factor that enters into the settlement, and on that stock about $1,200,000 of interest was computed, what would you do as an accountant with that interest on that same general theory?

A. I cannot answer the question because there was interest on the other side of the account of almost an equal amount. It is perfectly true that it covered a different period, but in view of the circumstances and what I have seen reported in connection with this claim, I would not consider such a claim at all. I think it ought to be turned out of this calculation altogether.

Q. That does not answer my question, it does not come within a hundred miles of it.

A. I want to answer your question if I can.

The Master: If that is the best you can do I will leave it right there.

By Mr. Holt:

Q. You would not consider it at all, but as a matter of fact all this indebtedness of Virginia, covered by this claim of hers against the Government of the United States, constituted a part of the debt prior to 1861, of Virginia, did it not?

A. Yes, sir.

Mr. Holt: We have to do something with that, is what is troubling us. It does not seem to be worth anything on the credit side, but a tremendous amount on the debit side.

Mr. Anderson: He said he would not either charge it or credit it.

Mr. Holt: I think we have all the facts on the subject, your Honor.

The Master: Yes, I think we have all the light we can get.

Q. Now we will turn back a little ways to some of these we inquired about a moment ago. We find that in the case of the Orange & Alexandria Railroad Company, Virginia received in settlement of the loan she had made to that company $745,341.48 and $129,365.83, exclusive of interest, and $125,556.48; and she received in payment of that loan as I understand you, her own bonds issued outside of the cash indicated by you?

A. Yes.

Q. Then that amount of her public debt was cancelled, was it not?

A. Yes, it was.

Q. And that was a part of her debt existing prior to January 1st, 1861?

A. The $745,341.48 was.

Q. And it was treated as a payment by her, was it not, on that debt of hers? She gave up the loan in payment of it, didn't she?

A. Yes, sir.

Q. Then you, instead of taking those bonds at par, as she did, reduced them to 57 cents?

A. 44 cents.

Q. No, reduced them to 44 cents. And upon the theory of market value you make it appear in this schedule that she received much less than the par value of her bonds caused to be cancelled by her, is not that so?

A. That is the intent of the schedule, yes, sir.

Q. The object being to show that although West Virginia may have to pay 23 1-2 per cent. of those same bonds at par, as being a part of Virginia's debt prior to January 1st, 1861, yet when you come to the credit side she is only to receive 23 1-2 per cent. of a much less sum, is that the object of the schedule?

A. I do not—

Mr. Robinson: If your Honor please, I object to that question. If they want to argue this case here we are prepared to do it now. Joint Exhibit No. 1 of the old record shows on its face clearly that these bonds, as they existed in 1861, included the bonds received from the United States and bonds subsequently received by Virginia, surrendered to Virginia in exchange for the stock of the Board of Public Works; and on the face of that statement West Virginia admitted that she was to be charged with these bonds, and that finally was found on her admission. I do not understand that the filing of a supplemental answer revokes that admission made by West Virginia, and in the face of that admission I do not see how the amount of bonds outstanding is to be cut down. The only other theory with which Virginia could be charged with the value of these assets received is their market value, and their market value is found by multiplying their par by the market quotation.

The Master: The only question before me is whether or not

this question submitted by Judge Holt is a proper question on cross-examination.

Mr. Robinson: In the light—

The Master: Yes, in the light of everything. And the proper light on this question is that Mr. Potter produces a schedule, the purpose of which he is supposed to know. Now Judge Holt wants to know what its purpose was, and he wants to probe his purpose, as I understand, for the purpose of discovering what the whole purpose was.

Mr. Holt: Of course.

The Master: Here is his schedule. If it is not his purpose, if somebody else instructed him, I do not know anything about that. But he has a purpose and he has made the schedule, and the Judge has a right on cross-examination to probe that purpose clear to the end. I think the question is competent for that reason.

A. I have prepared the schedule at the direction of counsel, the purpose of which I possibly anticipate, but I am not absolutely clear as to what use will be made of it.

The Master: The question is directed to you as to what your purpose is; is not that so, Judge Holt?

Mr. Holt: Yes, sir.

The Master: That is a perfectly proper inquiry. He wants to know what your purpose was, and if you have answered it fully why that covers the ground, unless the Judge wishes to pursue it further.

The Witness: My purpose was to show the total par value of the securities received by Virginia in payment of debts due her, and the net value of such payments.

The Master: Of course I have got to pass on the testimony of the witness, it is not the ultimate effect on the case itself. And I am going to be extremely liberal as I have already indicated, on these rulings. I want counsel on both sides to feel that they have all the decent latitude that they need or could under any circumstances be entitled to.

Q. In the case of the loan made by the State of Virginia, Item No. 7, to the Winchester & Potomac Railroad Company, you show at par that she received thereon the sum of $45,000. Is that correct?

A. $45,000 of the bonds—of issues prior to 1861.

Q. Prior to 1861?

A. Yes, sir.

Q. And how much as par of other bonds?

A. $66,130.90.

Q. Making a total of how much?

A. $111,130.90.

Q. Then by taking the quotation of the old bonds, at 53 1-4 I believe it is, you ascertained the market value of the bonds aggregating $45,000 to be $23,962.50?

A. Yes, sir.

Q. $66,130 of the new bonds, at 53 cents, to be $45,039.48.

A. Yes, sir.

Q. And those two amounts you added together and got your total of $59,011.88?

A. Yes, sir.

Q. As the real value of the bonds that at par aggregated one hundred and eleven thousand and some dollars?

A. Yes, sir.

Q. Those bonds were the debt of Virginia, were they not?

A. Yes, sir.

Q. And she took them up, settled them, and cancelled them, did she not?

A. I cannot state positively that she cancelled them. Some bonds were taken into the Sinking Fund and funded, and were in the possession of the Sinking Fund Commissioners, but the effect would be the same I suppose.

Q. In other words they were not out in the hands of other people?

A. No, sir.

Q. Well, there would be considerable difference between them, making a calculation between 23 1-2 per cent. of one hundred and eleven thousand dollars and fifty-nine thousand dollars?

A. Yes, sir.

Q. Now the same process of reduction of value has been indulged in by you in the case of the Norfolk & Petersburg Railroad Company loan?

A. Yes, sir.

Q. And the Roanoke Navigation Company stock?

A. No, that was sold for cash.

Q. That was sold for cash?

A. Yes, sir.

By the Master:

Q. The same thing is true, so far as bonds and stock exist, in relation to every item on this schedule, is it not?

A. Yes, sir.

Mr. Holt: That covers that point.

By Mr. Holt:

Q. Now what is the date of the market quotations that you have used here on these bonds of Virginia?

A. Those dates are shown in the sub sheets, for instance Orange & Alexandria, October 17th, 1872.

Q. Is the quotation of 44 in the case of Orange & Alexandria a quotation of 1872?

A. Yes, sir, the nearest date that I can find to that date is October 17th.

Q. Well what is the date of the quotation given opposite Richmond & Danville Railroad Company?

A. December 13th, 1870.

Q. Richmond & Petersburg Railroad Company?

A. I beg your pardon, there are three dates under Richmond & Danville, 1870, 1871 and 1877.

Q. Richmond & Petersburg, the quotation being 66.

A. We have used an average of the market quotations between March and September, 1871, on there.

Q. Now the date, please, of the quotation with reference to the Virginia Central Railroad Company, which is 73.

A. 1871.

Q. Without detailing any further, do any of those market quotations relate to the years 1860, 1861, 1862 or 1863?

A. No, sir.

Q. Turning now to that portion of the exhibit under discussion, No. 3, that falls under the heading bonds; that treats, as I understand it, only of the bonds of the railroad companies named therein?

A. The State bonds surrendered by the railroad companies.

Q. They were surrendered at their par, were they not?

A. Yes, sir, they were.

Q. And you have reduced them by the same process on the subject of value?

A. Yes, sir.

Q. To whom were they surrendered?

A. I believe they were actually surrendered to the Board of Public Works, and later on turned over to the Sinking Fund.

Q. They were surrendered, however, to the Commonwealth of Virginia?

A. Yes, sir.

The Master: Have counsel for Virginia any additional schedules other than those that have been handed to the other side?

Mr. Robinson: We have some typewritten exhibits.

The Master: Are they schedules?

Mr. Harrison: Here is one schedule.

The Master: Hand it to the other side.

Q. Mr. Potter, turning now to the residue of this exhibit No. 3, under the heading of cash, I suppose you mean by that cash paid by the various railroad companies therein named to the Commonwealth of Virginia?

A. Yes, sir.

Q. And you have reduced all of those cash payments to a lower level by the same process of market quotations, have you not?

A. No, only those that antedated the close of the war, only those received during the Confederate period.

Q. What proportion of those cash payments were made by those roads to the Commonwealth after 1865 or the close of the war?

The Master: Roughly speaking, give the percentage.

The Witness: I should say a little more than half was received after the war. That is very rough. I have not been able to compute.

Q. The reason I asked the question was because this schedule at least does not show the date of the payments.

A. I beg your pardon, Judge, it does in every instance.

Q. Then I have overlooked it.

A. The dates are put down below as to the first one. There are two stars in front of the $125,556, and carried down below.

By the Master:

Q. Nearly fifty per cent. were received after the war period?

A. Yes.

Mr. Holt: I thought he said more than fifty per cent.

Q. What did you say?

A. I cannot tell without going over it.

Q. In the neighborhood of fifty per cent. were received after the war period, and as to those items you have made no reduction to the gold basis?

A. No, sir.

Q. And that appears in your schedule, is that so?

A. Yes, sir.

By Mr. Holt:

Q. Now why didn't you reduce those to a gold basis, would not greenbacks have satisfied you?

A. I do not quite understand that there is any object of satisfying me in the matter.

The Master: If you have any personal reason state it. Just answer that question; it is up to you. You have made the schedule, and it is a perfectly proper question. Now then, why did you make that reduction? You had some reason.

The Witness: Because, when this money was received by the State it was worth in gold a certain amount, a certain amount less than its face, as is shown by an exhibit in the former case.

By the Master:

Q. The further question is why you did not make the computation in greenbacks instead of gold, greenbacks being at that time a legal medium of exchange. Answer that.

A. I do not think greenbacks were a medium here, I think Confederate notes were about the only medium. There was some gold and silver.

By Mr. Holt:

Q. Gold does not seem to have been a medium here then, does it?

A. Not a very common one.

By the Master:

Q. Neither was a medium of exchange, is not that true?

A. I believe Confederate currency was the only medium of exchange.

Q. Neither gold nor greenbacks was what we have been denominating here a medium of exchange within the Confederate lines or within the State of Virginia?

A. I think not.

Mr. Holt: He has denominated both as real money.

The Master: Does that conclude that schedule, Judge?

Mr. Holt: Yes, sir.

The Master: I am going to suspend for half an hour in order to give the counsel for West Virginia an opportunity to examine the schedules that have just been submitted to them by the other side; and if half an hour is not enough I am going to wait so that they can with satisfaction to themselves and intelligently cross-examine in relation thereto. I do not want you to feel that you have got to rush about it, but if you can do it in half an hour and make the examination you may, and if not take more time. We will resume, unless Judge Holt is not ready to complete his cross-examination, in a half hour.

Is there any detail you can put in while they are having the intermission for this purpose, because if there is I would like you to get it together. As far as your exhibits are concerned, he will come along with those.

Mr. Harrison: We will have some things to put in.

The Master: What I mean is to be ready to put it in as soon as we finish the cross-examination of Mr. Potter. I want to say this, that the mere fact that the accountants may not have an opportunity to check up these schedules will not in my judgment constitute a justifiable occasion for delaying the whole hearing, because it can be done later.

By Mr. Holt:

Q. Mr. Potter, we will now briefly take up Plaintiff's Exhibit No. 4. As I understand it, you simply take the claims made by the defendant in its schedule covering Class D in the supplemental answer and reduce those amounts to a gold basis; is that true?

A. Yes, sir.

Q. The tables for the accomplishment of which appear on page 647 of the original record?

A. Yes, sir.

Q. Do you know whether or not those were at a premium on the 1st day of January, 1861?

A. No, sir; I do not.

Q. I notice that you make no reduction of these claims of ours as stated for the year 1861 or as of the date of January 1, 1861; is that so?

A. All payments in 1861 were taken at the State's values.

Q. They were not reduced then to a gold basis?

A. No, sir.

Q. Well, if gold were at a premium on January 1, 1861, why would not you reduce them to a gold basis the same as you had reduced them on such premiums in subsequent years?

A. Because the premium was very small in 1861, and I believe the quotations that went in the record began in the latter part of that year.

Q. You say now they were very small, and you just told me a moment ago you didn't know whether gold was at a premium in 1861 or not.

A. I am speaking now to the subject of whether the Confederate notes were at a discount, not whether gold was at a premium.

Q. Well, there were no Confederate notes on January 1st, 1861?

A. No, sir.

Q. Have you any way of telling us whether or not gold was at a premium on January 1st, 1861?

A. I might ascertain. I believe I could, but I have no knowledge at this time.

Q. Does not page 647 of the original record show a premium on gold in 1861?

A. I do not know: I would have to refer to the record.

Q. Please look at it and see what it does show for that year.

The Witness: There does not seem to be one in the court room. I will get one.

(Book produced.)

Q. (Question repeated).

The Witness: In answer to your question, Judge, I believe this table you refer to is the table of Confederate values in gold. Is that what you have reference to?

Mr. Holt: No, I had reference to the premium on gold in another currency before Confederate currency came into being.

By Mr. Harrison:

Q. Do you find it on the page that you refer to?

A. No.

By Mr. Holt:

Q. Does not the page 647 referred to show a premium on gold as compared with Confederate currency in the year 1861?

A. Yes, sir.

Q. Well, then, if you are going to reduce us to a gold basis in 1863, on account of gold premiums, why didn't you reduce us for the year 1861 in the same way?

A. There is no particular reason, except that the premium was so slight that we did not consider it.

By Mr. Harrison:

Q. Weren't you taking the account as of the 1st of January, 1861?

A. Yes, sir.

Q. Is there any gold reduction on January 1st, 1861?

A. No, sir.

The Master: The question was as to whether or not there was some premium on Confederate money during the year 1861, and the answer was that there was, and then Judge Holt wanted to know why he did not apply that reduction to the figures in 1861; isn't that it?

Mr. Holt: Yes. I mixed Mr. Harrison or myself up by first inquiring of the particular date January 1st, 1861, and I subsequently undertook to change January to the year 1861.

Q. What is page 647 of the old record, is it an exhibit?

A. It is called Plaintiff's Exhibit E-2.

Q. Is there anything in that record showing a verification or proof or admission of the truth of that exhibit?

A. It is signed by H. Stewart Jones, Clerk of the Supreme Court of Appeals of Virginia, in which he certifies it.

Q. What does he certify it as being?

A. "I, H. Stewart Jones, Clerk of the Supreme Court of Appeals of Virginia, certify that the foregoing is a true extract from the record of Dearing's administratrix vs. Rucker, decided by the Supreme Court of Appeals of Virginia at its April Term, 1868, and that the table therein copied showing the value of Confederate States Treasury notes at various times during the war, is the

only table filed, or to be found in the record of said cause. Given under my hand this the 1st day of July, 1909. H. Stewart Jones, Clerk of the Supreme Court of Appeals of Virginia."

Mr. Holt: We submit that that does not establish the premiums set forth there.

The Master: You take the ground that it is not competent evidence?

Mr. Holt: It is incompetent evidence for that reason.

The Master: Then the other side can take note of that and govern themselves accordingly. I shall let it stand of course for the time being, and if the other side think it necessary to bolster it then it is up to them.

Mr. Harrison: We do not propose to debate the question.

The Master: They take the ground that it is not competent evidence tending to show the value of Confederate money at that date.

Mr. Harrison: That question we do not propose to debate.

The Master: Very good.

Mr. Holt: I am simply saving the point, and if it is worth anything will discuss it later.

The Master: Precisely so, and if the other side see fit they can rest on the case as it is, and that they say they will do, so we do not need to take any time discussing it.

Mr. Harrison: I do not see any use discussing it.

The Master: Not the slightest on earth.

Mr. Anderson: I think it is too late to raise the question.

The Master: That is a matter that you will take up later.

Mr. Anderson: You will find that has been established again and again in Virginia.

Mr. Holt: That may be, Mr. Anderson. Our point may be worth nothing, that may be true, I don't know.

The Master: That gives the other side notice that you raise it.

Q. In this Exhibit No. 4, as I understand it, you have not embraced any of the items of interest, but have taken simply principal sums and reduced them?

A. No; this exhibit shows all of the items taken up in your Class D, income, it is all interest, as I understand, interest and dividends.

Q. Well turn over to page 2 of the exhibit and see whether

or not you embraced under item 13 interest on loan collected by Virginia from the Government of the United States.

A. I will have to acknowledge that I did not. With that exception my former statement stands, I believe.

Mr. Holt: I believe your Honor, that our accountant tells us that the amounts in these columns as taken from our Exhibit D are correct.

The Master: Well, I am not going to hold the parties today or require them to agree to a verification of the schedules that have been recently submitted by Virginia, because I think it is fair to give the accountants on the other side more time to make the examination if they desire it. The understanding will be, when we suspend, that these schedules that have been submitted by Virginia are subject to verification by the accountants on the other side at the convenience of the accountants within the next few days. If it should turn out that they do not agree on any of these items, why the items in disagreement will have to be submitted to me at the time of final argument, with such comments or testimony as the parties may have, and I will pass on them at that time. I do not think I would be justified in delaying the hearing for the purpose of getting at the result of the verification by the accountants. I assume they will probably agree. Of course if the verification by the accountants of West Virginia results in the change of any of the items, those changes of course can be made by the accountants, and it can be done in any way that West Virginia desires. If they wish the schedule to simply be corrected without it appearing that the change has been made, after the inspection by their accountant, that can be done. If on the other hand they prefer to have the record show that fact, that after the inspection by their accountants it became necessary for the accountants for Virginia to make a change in the schedule, that may be appear, if they want it to appear. Do I make that all clear now? Are you through with Class D, Judge?

Mr. Holt: Yes, that is Exhibit 4.

The Master: This cross-examination goes into the transcript in its chronological order, although taken out of its chronological order. When the examination is printed I want the cross-examination and the items put in their chronological order.

Q. No. 9 seems to be a statement of interest due October 1st, 1914, upon West Virginia's share of the debt of the undivided State of Virginia, unpaid and outstanding January 1st, 1861, com-

puted from January 1st, 1861, according to the terms written in the bonds. As I understand the exhibit, Mr. Potter, you computed the interest to date.

A. Yes, sir.

Q. Upon all bonds that were payable at the pleasure of the Commonwealth?

A. Yes, sir.

Q. And you computed interest upon those bonds, payable at a fixed date, to that date?

A. Yes, sir.

The Master: That is to the fixed date?

Mr. Holt: Yes, sir, to the fixed date.

Q. Do you recall what the percentage of the whole debt payable by West Virginia was decreed by the Supreme Court of the United States to be?

A. 23 1-2 per cent.

Q. I note in the last line on the first page of this exhibit you have this statement, percentage of whole debt payable by West Virginia, 21.2 per cent.

A. Yes, sir, that is true.

By the Master:

Q. Why is it?

A. The $7,182,507.46 as applied to the whole debt, $33,897,073.82, is only 21.2 per cent.; the original debt having been scaled or reduced somewhat by the Supreme Court in their decision. The seven millions would be 23 1-2 per cent. of the original amount.

Mr. Robinson: If your Honor will recall, under the decision of Chief Justice Holmes, he scaled West Virginia's share because he said Virginia had scaled hers. This seven millions is only 21.2 per cent.

Mr. Holt: If Mr. Robinson will permit me I will get what I want there and make it plain.

By Mr. Holt:

Q. What was the total indebtedness as found by the Supreme Court to be apportioned between the two States, was it not $30,563,861.56?

A. I have not a copy of the decree before me. I do not know.

Mr. Anderson: Here it is, Mr. Potter (handing paper).

The Witness: What page is that on?

Mr. Holt: I have the official report, page 35 of this volume.

(Question repeated by stenographer.)

The Witness: Yes, sir.

Q. And they further found that West Virginia's part thereof was 23 1-2 per cent., did they not?

A. Yes, sir.

Q. Now, then, why do you change the ruling of the Court?

A. I have not changed it.

Mr. Robinson: I would like to ask Judge Holt, if he concedes that they are liable for any interest, that they are liable for 23 1-2 per cent., because we would be very glad to take 23 1-2 per cent. rather than 21.2 per cent.

Mr. Holt: You would like to take anything you could get.

A. I made the computations at the request of counsel.

Q. If you were to take 21.2 per cent. as her proportion of the debt instead of 23 1-2 per cent., and the same rules should be applied to the credits, it would make a very considerable difference, would it not?

A. Yes, sir.

The Master: Does that finish that schedule, Judge?

Mr. Holt: Yes.

The Master: Now you have three schedules, as I understand it that have not yet been put in; and they have been submitted to the other side. Now, let us have the first one. What number will it be?

Mr. Robinson: This exhibit will be No. 4-A, and this is a summary of defendant's Class D as of June 20th, 1863, reducing the income therein mentioned to a basis of gold as per page 647 of the original record at the reduction as stated in the schedule and as of the time stated in the schedule. The amounts are taken from defendant's Class D, and the computations are verified by Mr. Potter and are correct. Is that right, Mr. Potter?

The Witness: Yes.

The Master: Make that Exhibit No. 4-A.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 4-A, September 11th, 1914, C. B.

Mr. Robinson: The next schedule is a summary of West Virginia's claim under Classes B, E and G as of January 1st, 1861,

on the basis of the market value of the securities, with the exception of the Manassas Gap Railroad Company under Class G for which no quotation has been found. Attached to that is a summary entitled total amount of West Virginia's claim as of January 1st, 1861, taking cash at face, securities under Class C as per Plaintiff's Exhibit No. 3, income as per Plaintiff's Exhibit No. 4, securites under Class F at $500,000, and Classes B. E and G at market as per preceding page. We do not concede that these are proper measures of value. The object is merely to show the income, how West Virginia's claim would work out on this basis. Attached to that is a sub-schedule marked XX, in which the banks are figured at their market quotations as of January 1st, 1861, the Farmers' Bank, the Bank of Virginia, and the Exchnge Bank, taken at the quotations as per our Exhibit No. 2. No quotation was found of the Farmers' Bank, and the value of the quotation is taken at par because two of the other banks were at par and one at 101. My inquiry of Mr. Potter is whether he has verified these computations from the sources as stated in his exhibit.

The Witness: I have.

The papers were admitted in evidence and marked Plaintiff's Exhibit, No. 7, September 11th, 1914. C. B.

Mr. Robinson: Plaintiff's Exhibit No. 2 of West Virginia's claim under Classes B, E and G, as of June 20th, 1863, is based on the market value of the securities with the exception of the Manassas Gap Railroad Company in Class G, for which no quotation has been found.

The Master: Is that the same class of schedule as to 1863 as you have already filed as to 1861?

Mr. Robinson: Yes.

The Master: If that is so you need not go into detail about that.

Mr. Robinson: With this exception, in 1861 in our total summary we have annexed as the value under C, the market value that we found in our Exhibit, No. 3, and as regards schedule F, we have put in $500,000. In making up this summary of 1863 we have only put in values where we found quotations; in other words, we do not even concede that the sales and market values that we found are the values as they existed on June 20th, 1863.

The Master: And your question of Mr. Potter is whether

these computations have been accurately and correctly made.

The Witness: Yes, sir.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 8, September 11th, 1914, C. B.

Mr. Robinson: Now, we introduce No. 16, statement of the old unfunded bonds of Virginia for which Virginia issued her new bonds in full without setting off one-third as West Virginia's share. The details are taken from the Second Auditor's manuscript record of school and college bonds. This shows the interest paid from January 1st, 1872, to October 1st, 1914, on these bonds and is a supplement to our Plaintiff's Exhibit No. 1.

The Master: And your question to Mr. Potter is whether these computations have been correctly and accurately made.

The witness: They have.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 16, September 11, 1914, C. B.

Mr. Robinson: The next is the copy of that deed of trust which was marked in yesterday as Plaintiff's Exhibit No. 6. The signatures are omitted from the copy.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 6, September 11, 1914, C. B.

The Master: Have the verifications and the signatures added to that exhibit. That takes care of that. Have you any other exhibits?

Mr. Robinson: Yes, we have.

We read in yesterday Exhibit No. 5, the statute of March 2nd, 1866. The stennographer can get that and copy it into the record, because it is only a page and a half long.

Chapter 9—An Act to provide for Funding the Interest upon the Public Debt.

Passed March 2, 1866.

1. Be it enacted by the General Assembly, That the holders of the registered bonds of the State of Virginia, issued before the seventeenth day of April, eighteen hundred and sixty-one, be and they are hereby authorized to invest the interest due upon said bonds in registered bonds of the State, bearing the same rate of interest as the principal of the bond bears, and payable at any time the holder may elect, not less than ten nor more than thirty-four years from the date. Such bonds shall bear date on the first day

of January, eighteen hundred and sixty-six, and may be issued for sums of one hundred dollars, or any multiple thereof, and shall be in the form and executed in the mode prescribed by law for the issue of the certificates of registered debt of the State. But the interest upon the bonds so issued shall not be payable before the first day of July, eighteen hundred and sixty-seven.

2. The holders of the coupon bonds issued by the State before the seventeenth day of April, eighteen hundred and sixty-one, are hereby authorized to invest the interest due upon said bonds in either coupon or registered bonds of the State, bearing the same rate of interest as the principal of the bond bears; and the interest thereon, if the bond is a coupon, shall be payable at the place where the interest on the principal bond is provided to be paid; and such bond may be payable at any time the holder may elect, not less than ten nor more than thirty-four years from its date. Such bonds shall bear date on the first day of January, eighteen hundred and sixty-six; and if coupon, may be issued for sums of five hundred dollars, or any multiple thereof, or if registered, in sums of one hundred dollars, or any multiple thereof, and shall be in the form and executed in the mode prescribed by law for the issue of the certificates of registered or coupon bonds of the State. But the interest upon the bonds so issued shall not be payable before the first day of July, eighteen hundred and sixty-seven.

3. For any fractional sums of interest which cannot be invested under the two preceding sections of this act, certificates shall be issued in the form and mode prescribed by law for the issue of certificates of the registered debt of the State, payable in two, three or four years, with such interest thereon as is provided in the case of the bonds hereinbefore authorized to be issued.

4. The holders of any of the bonds of the State issued before the seventeenth day of April, eighteen hundred and sixty-one, may, after the first day of January, eighteen hundred and sixty-seven, invest the interest which shall be then due thereon, and not invested under the first and second sections of this act; and may also invest the certificates of debt, mentioned in the preceding section, in bonds of the State, bearing date the first of January, eighteen hundred and sixty-seven, in all respects similar to the

bonds provided for in said first and second sections; and for any fractional sum of interest which cannot be so invested, certificates shall be issued as is provided in the preceding sections.

5. The holders of bonds of the State issued by the restored government of Virginia since the creation of the State of West Virginia, are hereby authorized to invest the interest now due thereon, or which may become due up to the first of January, eighteen hundred and sixty-seven, in the same manner as is hereinbefore provided for the interest due or to become due upon the debt of the State of Virginia incurred before the seventeenth of April, A. D. eighteen hundred and sixty-one.

6. The auditor of public accounts shall have the bonds which shall be required, prepared, and shall perform all the duties under this act which are required by law to be performed by the second auditor in the issue of the certificates of debt of the State.

7. This act shall be in force from its passage.

The Master: That has gone in subject to the stipulation. If the parties see fit it may be stipulated out, and if not it will be printed in full.

Mr. Robinson: I think the stipulation would be longer than the Act.

Mr. Anderson: In connection with the last exhibit, which is as I understand an assignment of the State's interest in the several railroads which constituted the Atlantic, Mississippi & Ohio Railroad Company, we desire to put into the record as Plaintiff's Exhibit No. 17, Sections 9 and 10 of the Act of the General Assembly of Virginia, approved June 17, 1870, entitled An Act to authorize the formation of the Atlantic, Mississippi & Ohio Railroad Company, found at pages 183 and 184 of the Acts of Assembly of Virginia, 1869 and 1870.

The same was admitted in evidence and marked Plaintiff's Exhibit No. 17, September 11, 1914, C. B.

The Master: What is the next exhibit?

Mr. Harrison: I offer an extract from the annual reports of 1866, annual report of Auditor of Public Accounts, September 30, 1866, page 12. And also a copy of a journal entry, internal im-

provement journal, D, page 172. The extract from the Auditor's report relates to the condition of the banks after the war, as showing their worthless condition, and the extract from the journal of the internal improvement company is an entry showing that the stocks of those banks were charged off in 1872. Is not that right, Mr. Potter?

The Witness: Yes.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 18, September 11, 1914, C. B.

Mr. Harrison: I offer now a copy of the minutes of the proceedings of the Board of Public Works, dated February 11, 1868, in relation to the repudiation of the alleged payments by the Virginia & Tennessee Railroad Company on its million dollar loan made by the State, and also from the minutes of the Sinking Fund, page 188, dated December 5, 1864, relating to the same subject, beginning "Present all the Commissioners. Whereas it appears that the Virginia & Tennessee Railroad Company has paid," etc., and ending, "And then the Commissioners adjourned."

The Master: Counsel for Virginia must notify counsel for West Virginia within five days after the adjournment of this hearing as to how much of the original record they will rely upon in the argument.

Mr. Harrison: I would not like to be put under that limitation, or under any limitation, because I expect to make whatever use, at the argument of the case or in the preparation of a brief, I find it necessary to make of the original record. I do not expect them to give me notice of what they rely on.

The Master: If you do not want notice on either side, and you refer to the original record, and at the argument either side thinks they are taken by surprise and ask for time—

Mr. Harrison: I do not expect to be taken by surprise by any citation made from the original record.

The Master: I wanted in the beginning to have indicated what parts of this original record the parties intended to rely on.

Mr. Harrison: I could not state. There may be other matters in this record that we will find necessary to refer to. I have no doubt of it, and I have no doubt they will too.

The Master: If either party is taken by surprise, as to anything that is taken out of this original record, and they have to dig it up, they will have to have time, that is all there is about it.

Mr. Harrison: I do not see why anybody should be surprised by anything in this old record.

The Master: But I cannot see why notice should not be given by each side to the other as to what they rely on.

Mr. Harrison: The depositions I am referring to are the depositions of Colonel John P. Branch, page 753 of the record—

The Master: Suppose you put it this way. You intend to rely on all of the depositions that relate to Confederate currency and its use as a medium of exchange, and you give notice now you may comment on them in your argument.

Mr. Harrison: Yes, we rely on them. Now, here is an exhibit that we want to file, an extract from the report of the Second Auditor of Virginia, dated the 30th day of September, 1904, relating to the settlement of the claim of the Commonwealth of Virginia against the United States.

The Master: Has a copy of that been submitted to the other side?

Mr. Holt: We have it.

The paper was admitted in evidence and marked Plaintiff's Exhibit No. 20, September 11, 1914, C. B.

Mr. Anderson: If your Honor please, we desire to put into the record as Exhibit No. 21, a report of E. R. Leland, Special Commissioner of the Circuit Court of the City of Richmond, Virginia, in the suit of Tirill and Bocock, trustees, and Alexander and Ellyson, as trustees, against the Richmond & Alleghany Railroad Company, found at pages 198 and 199 of the second volume of the Court proceedings of those causes.

Mr. Hogg: What Court was that in?

Mr. Anderson: The Circuit Court of the City of Richmond. Secondly, the decree of the Court confirming that sale, found at page 202 of the same volume of the same record; and third, the deed from Leland, Commissioner, to Davis, Cox and Tod, the purchasers of the property of the Richmond & Alleghany Railroad Company, from page 229 to page 235 of the same volume. We wish to file all these as one exhibit.

The Master: That may be done.

Mr. Anderson: And also this stipulation, to save putting in a number of extracts from that record:

It is agreed by counsel for the plaintiff and defendant and for the bondholders that the recitals contained in the deed from Spe-

cial Commissioner Leland, of date May 20, 1889, to Erwin Davis, Charles F. Cox and J. Kennedy Tod, correctly recites the facts shown by the record of the Chancery suits of Tirill and Bocock, trustees, and of Alexander and Ellyson, trustees, against the Richmond & Alleghany Railroad Company, lately pending and heard together in the Circuit Court of the City of Richmond, under decrees in which cause the property of the said railroad was sold.

Mr. Harrison: I have not had a copy of this made, but I want to offer a letter dated July 30, 1914, of Decatur Axtell, first vice-president of the Chesapeake & Ohio Railway, to Mr. Potter, Mr. Arthur G. Potter, on the subject of the James River and Kanawha Company, which was taken over by the Richmond & Alleghany Railroad Company. I would have had Mr. Axtell here as a witness, except that he is on the line, as they call it, more or less of the time, and I could not tell when we could use him. But he could not state, as far as I know, anything more than is contained in this letter. I will either read it or hand it to these gentlemen.

Mr Lilly: We feel constrained to object to such evidence as that.

Mr. Harrison: Very well, then, we will examine Mr. Axtell. We have heretofore been stipulating a good deal in this case, and all the agreements to stipulate seem to have been confined to this side. I have not yet found our friends ready to stipulate to anything that we want to stipulate to . If they are not willing to stipulate that Mr. Axtell, if he were present, would say under oath what he said in that letter, why we can adjourn and I will get him here whenever I can.

The Master: Let us see what he proposes to say.

Mr. Holt: Let it be read without taking it down.

(Mr. Harrison then read the letter.)

Mr. Harrison: I would like to know if you gentlemen have any objection to it.

The Master: He really does not know much about it, when you get right down to it.

Mr. Lilly: I do not think we will agree to that. If he can prove it is insolvent, let him come here and do it and let us go into that.

The Master: What do you say about that?

Mr. Holt: So far as the purchase price is concerned, our complaint was that they did give away a valuable property in which

we were interested.

The Master: The condition is this, is it not, that the State of Virginia was a stockholder in the James River & Kanawha Company; the Richmond & Alleghany bought the property of the James River & Kanawha Company; they dealt, I suppose, with the James River & Kanawha when they made the purchase. I presume there is enough in this record to show what that transaction was. It would be very extraordinary if a stockholder in the James River & Kanawha was receiving some consideration that the James River & Kanawha Company did not receive itself. I do not know about the insolvency, but I have not seen anything in this record yet that goes beyond a transaction between one corporation and another corporation. In the first corporation it happened that the State of Virginia was a stockholder. The consideration between the James River & Kanawha and the purchasing company, so far as I am concerned, unless something appears in this case to the contrary, will be the whole transaction. How far that goes I do not know, but I think that is the legal situation.

Mr. Harrison: If these gentlemen won't consent to it, that is all right.

Mr. Lilly: We cannot agree that the company is insolvent.

Mr. Harrison: I will make no further effort to induce you to agree to any stipulations that we ask. I will say that.

The Master: You are not obliged to make a stipulation because they have. The only obligation about a stipulation here is to reduce the expense. What have you got, Brother Harrison, besides this statement of Mr. Axtell?

Mr. Harrison: I want to examine Mr. Axtell.

The Master: Here is a question pending then. Mr. Robinson wants to prove by Mr. Axtell, so far as he can, the statements he makes in this letter. Do I understand that West Virginia is not willing to concede that he would so testify so far as is admissible?

Mr. Lilly: We would want to cross-examine him.

The Master: What else have you by way of testimony of any kind, exhibits or otherwise?

Mr. Harrison: This thing of trying to rush through is rather unsatisfactory. The Treasurer of Virginia, for example, has been sick for three or four days, and we have expected to examine him on some very important matters.

The Master: Where is he?

Mr. Harrison: He is home, sick.

The Master: What do you expect to prove? Perhaps they will admit it.

Mr. Harrison: I would not like to ask them.

The Master: I am not embarrassed about it; I will ask them.

Mr. Anderson: We wish to prove by him what is really the cash book of Virginia, in which all of the receipts of money are recorded, that go to the treasury of the State—the deposit of that money is shown there. In that book is entered every one of these payments made to Virginia on account of dividends in the different corporations, on account of dividend obligations on account of indebtedness of those different corporations to the Commonwealth. They are all recorded there. And that book shows where those funds were deposited, and practically what became of them and what we want to show is that they went into these banks, were mixed up with the other receipts of the Commonwealth from taxes and so on, and remained there until the close of the war.

The Master: What is the significance?

Mr. Anderson: That these funds were paid in Confederate money and lost.

The Master: You have got this case all full, without any contradiction or impeachment of the fact that every commercial transaction and every business transaction in the State of Virginia during the war period was handled upon the basis of Confederate currency being the medium of exchange. You have proved it and there is not a word of contradiction about it. Now, does this add anything?

Mr. Anderson: It only shows that this Confederate money was absolutely lost and perished to the extent of $1,700,000.

The Master: Do you add anything to your existing proof?

Mr. Harrison: There are some other features that we want to examine him about. But we can take their depositions, and any others that we see fit to take. We will give the other side notice and take them between now and the argument.

The Master: Is there anything else?

Mr. Robinson: I stated this morning that there were some bonds issued in January, 1861, and Mr. Potter would check that up and furnish to the other side computations as soon as he could do it. As a supplement to Plaintiff's Exhibit No. 1, I also stated that Mr. Potter would compute the bonds of 1866 and 1867 on the

basis of the various refunding acts and furnish the other side with that, and that would go in as a supplement to Exhibit No. 1. In regard to Plaintiff's Exhibit No. 9, which is our interest schedule, we propose to have a computation made showing the interest on the amount that West Virginia would pay upon the sum found by the Court on the basis of the refunding acts of Virginia, and that will go in as a supplement to Plaintiff's Exhibit No. 9. As soon as Mr. Potter can make the computations he will furnish the other side with a copy. The only other computation that we have will be Plaintiff's Exhibit No. 22 and will be a computation of the amount of Virginia's bonds now outstanding and the amount thereof which Virginia has paid to date, paid off, and the amount of interest which Virginia has paid from 1861 to date on account of her share of this debt and what she now owes.

The Master: Is there anything else?

Mr. Robinson: That ends us.

The Master: And all these computations are to be submitted to the other side as soon as made in order that their accountant may verify them. Can you proceed, Judge, with your cross-examination, because that will be the only thing left now except what you may have in rebuttal.

Mr. Holt: We have several exhibits here, your Honor, I suppose half a dozen, that we want to examine. I have gone over them, but not in a satisfactory way, and I can proceed and go as far as I can, but I doubt very much whether we can complete our cross-examination this evening on the residue of these exhibits. I regret very much to say that, your Honor.

The Master: You need not be embarrassed about that. As far as I am concerned, of course if we can get through I will go home to-night, but if not, I am not going home until we get this case finished and finished in a way that counsel on both sides feel is the proper way, and if you do not feel that you can complete this cross-examination this evening—if we could clean the case up by half past six except this matter of Mr. Axtell, as to that I will see what we will do about it, and I would like to go on and do it, but I am not going to ask Judge Holt to close this cross-examination if he has any feeling that he is not making it as complete and adequate as he wants to make it. I do not think that is a proper thing to do and I shall not do it, and I am going to rely altogether on his judgment upon that.

Mr. Holt: Then upon the subject of taking depositions, your Honor—

The Master: As to that I will say this, I have not heard any adequate reason stated so far why if I stay here to-morrow Mr. Axtell cannot be here as a witness.

Mr. Harrison: If you will be here to-morrow, I will try and get him up here.

The Master: I do not know that they contend that he cannot be gotten here to-morrow.

Mr. Harrison: I will say that I did not make any special effort to have him remain over here or anything of that sort, because I did not have any doubt but what we would agree to let what he writes go in as a statement which he would make if he had been here.

The Master: That is a pretty vigorous letter that he writes, and I do not think they are the subject of criticism if they do not want to concede that he would so testify and deprive themselves of the opportunity for cross-examination.

Mr. Lilly: He seems to make the statement offhand, guess work.

The Master: It is a pretty vigorous statement and I do not want to criticize the other side if they think they ought to have an opportunity to cross-examine. Under the circumstances, Judge, you do not feel that you would like to conclude the cross-examination to-night?

Mr. Holt: I would rather not.

The Master: Suppose we have an understanding that Mr. Axtell is to be produced here to-morrow morning at half past eleven o'clock, at which time I should hope that Judge Holt would be through with his cross-examination, and that will give us ample time to take his testimony. When I suspend I am going to suspend until half past nine, and that certainly ought to give counsel on both sides an opportunity to examine everything they care to take up, and fag ends, and clean their case up without any difficulty to-morrow forenoon or to-morrow afternoon.

Mr. Holt: I do not believe we will have any difficulty about it, your Honor.

The Master: Have you anything by way of rebuttal?

Mr. Holt: We have two or three memorandum statements here that are matters of record; they are very short.

The Master: We will suspend until half past nine to-morrow morning, at which time Judge Holt will go on with his cross-examination of Mr. Potter, and meanwhile so far as is feasible, I do not want to tax Mr. Potter too much, because he is very tired, but so far as is feasible I would suggest that the accountants for West Virginia proceed with their checking up. Before we suspend, is there anything that occurs to either of you that you want to suggest in the line of getting everything cleaned up to-morrow, anything that you want from me or anything that you want from the other side?

Mr. Harrison: No, sir; I do not know of anything.

Mr. Robinson: How about that stipulation on account of eliminating acts from the record, Judge Holt?

Mr. Hogg: I will dictate this stipulation now:

It is hereby stipulated between counsel on behalf of the Commonwealth of Virginia and of the State of West Virginia and counsel representing the bondholders that the suit of Virginia against West Virginia relating to the question of the territorial boundaries of the latter was instituted in the Supreme Court of the United States on the —— day of February, 1866, and was pending until the 6th day of March, 1871, before it was finally ended, and that the object of said suit was to determine the question whether or not the counties of Jefferson and Berkeley constituted a part of the territory of West Virginia the State of Virginia claiming that the said counties constituted a part of her territory; and the stenographer is hereby directed not to copy the report of the case appearing in 11th Wallace.

The Master: Before we adjourn of course I want to have an understanding as to when this case is going to be argued, and I want the counsel upon either side to think the matter over so that when they come in here in the morning, or some time before we adjourn to-morrow, they will be prepared to give me their judgment as to what they can do and how they can get along.

Mr. Harrison: We would like to have a suggestion from the other side now.

Mr. Holt: Here is another stipulation that was presented by Mr. Robinson to this side, the tail end of which we have cut out, but the fore part of it we are willing to agree to. I will read it as far as we subscribe to it:

It is hereby stipulated that all copies of Acts of Virginia, opinions of the court and reports of committees read into the

record by West Virginia on September 9th and 10th, shall be copied directly into the printed record without having the same transcribed into the typewritten record.

We are perfectly willing to agree to it that far. That would save some expense.

The Master: There are some practical conditions involved in printing things, and printers do not take a book and print from the book, because they cannot do it that way, and somebody has got to present to them a typewritten copy of whatever is going to come out of these books and documents. Somebody has got to make the copies.

Mr. Holt: We had already made the typewritten copies ourselves and intended to furnish them to the stenographer so that he under this condition would not embrace them in the stenographic report but would place them with the printer.

The Master: If they have got typewritten copies—have you got duplicates?

Mr. Robinson: We will take their typewritten copies; we do not care for duplicates.

Mr. Harrison: What is the last part of the stipulation?

Mr. Holt: This is the part that we do not agree to:

And that so far as any of said papers appear either in the original record in this case, the appendix to the original record, or in the West Virginia compilations, Volumes 1 and 2, they shall not be printed in this record.

And our reasons for that are these. First, I have not a complete set of the old record; secondly, a part of the old record was never printed; thirdly, I would like to have such of these acts as we rely upon printed in a convenient form together. Some of them may have appeared heretofore and some of them may not.

The Master: I have already stated that there will have to be an agreement between the parties on both sides.

Mr. Holt: If it be desired by these gentlemen to make the first part of the stipulation I will agree to it.

The Master: That stipulation need not be made part of the record, that simply shows how the record is being made up.

Mr. Harrison: What suggestion have you to make about the argument of the case?

Mr. Lilly: We will take that up to-morrow.

Mr. Holt: I would like to inquire of the Master where he would expect us to argue.

The Master: In New York, and unless otherwise arranged, in my office. Or if you prefer to take a room at the Bar Association, that is agreeable to me.

Mr. Holt: I had hoped that the Master might like to visit White Sulphur Springs at that time.

The Master: That is of course only a matter of a night's travel. I will say this. My own personal preference is, the arguments are to be confined to two counsel on each side, one counsel to represent the bondholders if they desire, two counsel on the part of West Virginia, that is what I suggested in New York, I think, unless of course there is some good reason that you think is important why somebody else should take a hand in it, that is all right, but on general principles I thought I would make that modification.

Mr. Harrison: Major Anderson and I will argue the case on behalf of the plaintiff.

The Master: If they desire I shall hear someone representing the bondholders. And if West Virginia feels that there are three men on the other side, and therefore want three men to take part in the argument, I should agree to that of course. As to the limit of argument, why I am inclined to think that I shall let each man take his own time. Personally I always feel mean if I have got to cover a certain amount of ground, and I sometimes feel worse if I have to keep within a certain limit.

Mr. Harrison: I doubt the wisdom of going to White Sulphur Springs to argue this case.

Mr. Holt: On account of books?

Mr. Harrison: Yes, especially on that account.

The Master: If the case is argued in New York at the Bar Association, why everything that is in existence from a legal standpoint is conveniently available.

Mr. Harrison: When shall we have this argument?

The Master: How long do you want to make your preparation?

Mr. Harrison: We would like to have West Virginia's brief.

Mr. Anderson: And they would like to have ours before they make their argument. How is that, Judge?

Mr. Holt: It would be very desirable.

Mr. Harrison: Suppose you get the printed record on Monday the 21st, how long would you want to prepare your brief.

Mr. Lilly: It ought to take a month to prepare a brief, but of course I understand we would not have that long.

Mr. Hogg: Why not the plaintiff's counsel confer and we will confer, and come in, in the morning.

Mr. Holt: How much time would your Honor want after the argument in which to prepare your report?

The Master: I ought to have probably two weeks.

Mr. Lilly: The briefs have to be printed after they are prepared.

Mr. Harrison: Do you expect us to use before you printed briefs?

The Master: Yes, I would like to have each side submit me a printed brief.

Mr. Harrison: We did not do that before.

The Master: There were some printed briefs before. Of course it would be a very great convenience to me if the briefs were submitted in printed form.

Mr. Hogg: We ought to have as much time as we could possibly get.

Mr. Holt: I would like to make one inquiry, and I would like the gentlemen on the other side to hear it. Is it expected that the Master will be back in Washington with his conclusions on the 13th of October?

The Master: I shall do it if I can, but that will depend upon when I get the briefs. I took about six weeks or nearly two months on the other case.

Mr. Holt: If the Master could give us until about the 10th of October before he would require argument, that would give us about 22 days in which to prepare and file and print the briefs. Then we could argue it before the 13th, and at that time he would report to the Court that the evidence had been taken, briefs filed, and the matter in his hands, and that he would be ready to report say on the 10th of November.

The Master: You would have to get around earlier than that. The 10th of October is Saturday, and there is an intervening Sunday.

Mr. Anderson: Suppose we hold the matter over until tomorrow.

Adjourned to September 12th, 1914, at 9:30 A. M.

BEFORE THE MASTER

Richmond, Va., September 12, 1914.

PRESENT: Same Counsel as on Yesterday.

Continuation of the cross-examination of

ARTHUR G. POTTER.

By Mr. Holt:

Q. Mr. Potter, your Exhibit 4-A seems to be a summary of Defendant's Class D, 1863, reduced to actual values as per page 647 of the original record. What is meant by reduced to actual value?

A. Reduced to the quotations in gold on Confederate currency on the dates of the receipt of the items embraced in that schedule.

Q. In other words it is reduced to a gold basis?

A. Yes, sir. There is a slight typographical error in that statement on the first page.

Q. I will call your attention to one of them directly. Look at page 8, South Side Railroad Company. You have an item here of $8,400. Is that correct?

A. No, sir, that should be $84,000. The extension, however, is correct. It is a typographical error.

Q. The extension is correct, and you discovered that sum would even it up.

A. Yes, sir.

Q. Now as I understand you, in this exhibit you take the claim of West Virginia as set forth in her schedule covering Class D, reducing the amount, treating it as if paid in Confederate money and reducing it in amount to its value in gold?

A. Yes, sir.

Q. That is true of the first item?

A. Yes, sir.

Q. I see you have Richmond & Petersburg Railroad Company marked the third item. How does that come?

A. There is no claim for income of the second item.

Q. What is it?

A. That is an extension on the same basis.

Q. I understand that, but you have jumped from 1 to 3. You are numbering these items Orange & Alexandria Railroad Company 1, and next the Richmond & Petersburg Railroad 3 instead of 2. Is anything omitted from our schedule?

A. I think that there is nothing extended on your schedule for No. 2, Richmond & Danville—that is true, on page 36 of the blue prints, there is no extension.

Q. That is the explanation then is it?

A. Yes, sir.

Q. Because no claim was made on account of that class by West Virginia to the Richmond & Danville you have omitted it?

A. Yes, sir.

Q. Turn to page 2, Mr. Potter and see whether or not you have carried out anything on account of item No. 13, United States Government.

A. No, sir, nothing extended.

Q. Well, West Virginia in her schedule made a claim on that item, did she not?

A. Yes, sir.

Q. This exhibit is entitled summary of Defendant's Class D, 1863.

A. Yes, sir.

Q. Reduced to actual value as per page 647 of the original record?

A. Yes, sir.

Q. Then you have not taken our schedule on Class D, the whole of it, and reduced it to a gold basis?

A. No, sir.

Q. What was the claim made by West Virginia on account of that item, United States Government, in the Class D?

A. 1863, $872,260.07.

Q. Therefore in taking up this schedule of ours and reducing it from our claim to a gold basis you have not included all the items or claims set forth in our schedule?

A. No, sir, that is the exception, United States Government.

Q. Why did you omit it?

A. At the direction of counsel.

Mr. Holt: I believe that is all of 4-A, your Honor.

The Master: Let me have duplicates of these various exhibits Mr. Robinson. I have not had a copy of this.

Mr. Holt: Now, the next exhibit we have, I believe is No. 7. I want, Mr. Harrison, to get the numbers straightened out in my own mind, if I can. We have gone over now No. 1, 2, 3, 4, and 4-A as well as 9. Now after 4-A what comes, No. 7? I mean in the shape of schedules, or was it a statute making 5 and a deed of trust being 6, and then we come to the schedule No. 7?

The Witness: Yes, sir.

Q. No. 7 is the next schedule, is it Mr. Potter?

A. Yes, sir.

The Master: These are really computations; neither one of them introduced any new factor in the case as I understand it?

Mr. Holt: Well, that is practically the situation. I want to see if I understand it.

The Master: Yes.

Q. Your No. 7, Mr. Potter, seems to be a summary of West Virginia's claim under Classes B, E and G, as of January 1, 1861, on the basis of the market value of the securities, with the exception of the Manassas Gap Railroad Company, under Class G, for which no quotation has been found?

A. Yes, sir.

Q. Now Class B, as I recall it related to the Richmond, Fredericksburg & Potomac Railroad Company?

A. Yes, sir.

Q. And Class E to the banks?

A. Yes, sir.

Q. While Class G is the last one and the one in which you find the James River & Kanawha Canal Company and the Manassas Gap Railroad Company?

A. Yes, sir.

Q. Then the item under Class B, Richmond, Fredericksburg & Potomac Railroad Company, is a calculation, taking

the market quotation upon the stock of that company for 1861, of 76½ cents, and multiplying it by what?

A. $75,200, the par value of the stock held by the State.

Q. And that gives you $210,528., which is how much less than par?

A. 23½ per cent.

Q. Well, it would be about $64,000.

A. About $64,600.

Q. Now then, if that market quotation of 76½ was not taken from any stock exchange but from a mere unaccepted bid on the stock at the date covered by it, the calculation would not give much idea of the total value of the stock at that time, would it?

A. I think it would be an indication of the value.

Q. Well it would not be a strong indication, would it?

A. I think it would.

The Master: I suppose the original books of Lancaster & Company and Sutton Brothers & Company are accessible and available.

Mr. Anderson: I fear not. The places where their offices were, were burnt down.

The Master: Do you know anything about it?

Mr. Anderson: No, I do not.

Mr. Harrison: Mr. John L. Williams would know if anybody would.

The Master: You may be up against the proposition as to whether or not a report of somebody to a newspaper and published in a newspaper is legal evidence of the sale. I have not examined that at all and do not express any opinion about it. My suggestion is that if there is in existence a set of original books which show actual sales it may turn out that that is the best evidence.

Mr. Harrison: If there are, we will see if we can get them.

The Master: I simply suggest that.

Mr. Holt: Especially a private report of one sale, I think the books do hold that it is not evidence.

The Master: I am not intimating anything about it one way or the other. I am simply saying that you might have that

point raised on you at the final argument, and if there was in existence legal evidence tending to show these facts you might feel as though you ought to have it. Of course it is understood that it is open to either side to raise any question as to the competency of the testimony upon either side and as to its admissibility, even though they raise it for the first time at the argument. The case has been tried on that basis. You get my point, Mr. Harrison, I simply suggest this.

Mr. Harrison: I understand.

By Mr. Holt:

Q. The market quotation taken in Exhibit No. 7, upon the Richmond, Fredericksburg & Potomac Railroad Company, of 76½ cents is of January 4, 1861.

A. Yes, sir.

Q. And was taken, as I recall, and put into your Exhibit No. 2 from the Richmond Dispatch?

A. Yes, sir.

Q. And you were unable to say whether that represented a single transaction or many transactions, a sale, a bid or an offer?

A. No, sir.

By The Master:

Q. What is your answer to that, no, sir?

A. Yes, sir.

Q. Well, your answer is yes, sir, that you are not able to say?

A. I am not able to say.

Q. All of these quotations that have been used in these subsequent computations involved in these exhibits are subject to the same testimony that you gave in relation to Exhibit No. 2?

A. They are, sir.

Q. In other words you have no original information as to those schedules, and all that you know about them is what appears upon the schedules themselves?

A. That is true.

Q. That simply shows that you have no knowledge as to any of the details as to any of those items, is that right?

A. That is true, yes.

By Mr. Holt:

Q. The Schedule 7, so far as market quotations are concerned, is based, as I understand it, solely upon the market quotations in your Exhibit No. 2?

A. Yes, sir.

Mr. Holt: The point I was getting at, your Honor, was that this was marked a summary of West Virginia's claim on the basis of the market value of the securities with the exception of the Manassas Gap Railroad Company under Class G, for which no quotation has been found. It does not indicate upon its face that it is based upon Exhibit No. 2.

The Master: I understand that it is based upon Schedule 2, and that all the other computations are based upon Schedule No. 2.

The Witness: Yes, sir.

Q. Class E, transfer as per sub-schedule XX, as I understand that now, turning to sub-schedule XX, you take the market quotations on the Farmers' Bank of Virginia as of January 4, 1861, from your Exhibit No. 2, and the market quotations on the Bank of Virginia as of the same date from the same schedule, and then take the amount of the claim made by West Virginia in Class D, and make your calculation?

A. Well, there is no calculation to be made there because it is par, Judge. The market quotation is par.

By The Master:

Q. Well, you have put down the results?

A. Yes, sir.

By Mr. Holt:

Q. Then you don't rely upon any of our exhibits for any of these amounts?

A Excepting par of the stock as stated in your schedules.

Q. I mean it is not taken from any claim made by West Virginia?

A. No, sir.

Q. You took the Farmers' Bank of Virginia and the Bank of Virginia and treated the stock held by the Commonwealth of Virginia therein at par because you found the market quotations taken from your Exhibit No. 2 to be par at that date, is that so?

A. Yes, sir.

Q. And then you took the Bank of the Valley and treated it at par because the market quotations taken from your Exhibit No. 2 did not show it to be par as of that date, isn't that so?

The Master: Did not show any quotations.

A. Yes, sir.

Q. In other words, when the market quotation put it at par you utilized it, and when it does not put it at par or anything else you put it at par anyhow?

A. Yes, sir.

The Master: That only applies to one bank?

Mr. Holt: Yes, that is the Bank of the Valley.

The Master: And that bank is located in Winchester as I understand?

Mr. Holt: Yes, sir.

Q. Now, the Exchange Bank is treated in the same way as the Farmers' Bank of Virginia?

A. Yes, sir.

Q. And based upon the market quotations for that date from Exhibit 2?

A. Yes, sir.

Q. Now, I notice that in treating the Northwestern Bank on your sub-schedule XX you have not carried forward any amount at all, neither have you carried forward any amount on account of the Fairmont Bank in arriving at your total of $3,294,375. Why did you not enter something on account of those banks?

A. The entire schedule was made at the direction of counsel and I was instructed to leave them out.

Q. The stock held by the Commonwelth of Virginia in the Northwestern Bank was just as much its property as the stock held by it in the Farmers' Bank of Virginia, was it not?

A. Yes, sir.

Q. And the stock held by the Commonwelth of Virginia in the Fairmount Bank was just as much its property as the stock held by it in the Farmers' Bank of Virginia?

A. Yes, sir.

Q. Now, why would you omit that, why did you out of these six banks embrace four and exclude four?

A. I have just answered that it was done at the direction of counsel, Judge.

Q. You have no reason at all—

By The Master:

Q. Is that all you know about it?

A. That is all, yes. sir.

By Mr. Holt:

Q. If you were seeking to make a settlement between West Virginia and Virginia, and the settlement depended upon the common assets, in order to get right as an accountant you would consider all the assets, would you not, Mr. Potter?

A. I believe so, yes.

Q. Don't you know so?

A. Well, there might be some special circumstances surrounding it. If this went to West Virginia why no, I would not.

Q. Well, suppose only a part of it went to West Virginia?

A. I would extend only the part that Virginia retained.

Q. Do you know how much West Virginia received out of the Northwestern Bank?

A. I have not the figures before me, no, sir.

Q. Do you know how much Virginia got out of it?

A. No, sir.

Q. Would it make any difference, so far as the statement of this account is concerned, at this point, whether West Vir-

ginia got any part of the Northwestern Bank or not? Is not the effort here to total the assets first, the common assets?

A. Do you mean in this schedule?

Q. Yes.

A. I do not know what the effort is here.

Q. Well is not the effort here to show the value of all the assets that Virginia had in the shape of bank stocks at that time, based upon market quotations?

The Master: You mean the effort generally in the hearing, or do you confine that to this exhibit?

Mr. Holt: I am speaking of this exhibit.

A. No, sir, not in this schedule.

Q. What is the object of this schedule?

A. To show the market value, or as near the market value as it is possible to get, of the four banks, the stock held in four banks by the State of Virginia. The other two are omitted.

Q. Well, she held stock in the Northwestern and in the Fairmount just as well as in the others. That brings me right back to the question, why would you make a partial statement of the value of her assets represented by bank stock?

A. I made the statement at the request of counsel, sir.

Q. Very well, we will let it go at that. Class G, turning back to the first sheet, No. 7, is Manassas Gap Railroad Company; and you have no entry opposite that item at all, because you found no market quotation thereon?

A. That is true, sir.

Q. Then so far as the Manassas Gap Railroad Company is concerned, that schedule means nothing, does it?

A. That is true, sir.

Q. I did not ask you, I believe, anything about the James River and Kanawha Company on that?

A. No, sir.

The Master: You mean in relation to this schedule?

Mr. Holt: In relation to this schedule. Well, that will do for No. 7; I see it does give the market quotations on that stock.

Q. No. 8 is a summary of West Virginia's claim under Classes B, E, and G as of June 20, 1863, on the basis of the

market value of the securities with the exception of the Manassas Gap Railroad Company under Class G, for which no quotation has been found. What is the difference then, Mr. Potter, between No. 7 and No. 8?

A. That in the Exhibit No. 8, the market quotations, which are taken as Confederate quotations, are reduced to gold.

By The Master:

Q. Is that exactly like the preceding schedule with that exception?

A. Yes, sir.

By Mr. Holt:

Q. Well, you have different market quotations for 1863, have you not?

A. Yes, sir, different market quotations.

By The Master:

Q. I understand that, but it is on exactly the same plan with that exception?

A. Yes, sir.

By Mr. Holt:

Q. In other words you take the same number of shares of stock in the different companies in both schedules?

A. Yes, sir.

Q. But you take different market quotations on account of the difference in dates?

A. Yes, sir.

Q. And in 1863, Confederate currency being then rampant, you reduced your result to a gold basis?

A. Yes, sir.

Q. That is what this means?

A. Yes, sir.

Q. What did you take as the market quotation on James River and Kanawha Canal stock in 1863?

A. 22.

The Master: Are you going to examine Mr. Axtell?

Mr. Harrison: No, sir. He left town last night.

The Master: Do you want to examine him?

Mr. Harrison: Yes, sir, I want to take his deposition.

Mr. Holt: I think that is hardly fair, your Honor. I do not want to be running over to this town.

The Master: Do not let us discuss that now. We will take it up in its order.

Q. Will you turn now to sub-schedule 3-X and look at the items Northwestern Bank and Fairmount Bank?

A. Yes, sir.

Q. I see you have made no entry to be carried into your sum total after either of those banks.

A. That is true.

Q. Unless you do embrace those banks the title to your exhibit would scarcely be correct, would it?

A. The title is an indication of what is contained. It is not all embracing, I think; I did not read it that way.

Q. You say in your title as I understand it that the exhibit is a summary of West Virginia's claim on account of certain classes. West Virginia made a claim on account of the Northwestern Bank, did she not?

A. Yes, sir.

Q. And she made a claim on account of the Fairmount Bank?

A. She did.

Q. And yet you have omitted from this amended summary both of these claims?

A. Yes, sir.

By The Master:

Q. To that extent it is inconsistent with the title, isn't it?

A. To that extent, yes, sir.

By Mr. Holt:

Q. Why did you omit them in this schedule, for the same reason that you omitted them from the corresponding schedule in 1861?

A. Yes, sir.

Q. Turn to your exhibit No. 16, Mr. Potter, being a statement of old unfunded bonds of Virginia for which Virginia issued her new bonds in full without setting off one-third as West Virginia's share.

The Master: Is that the one that you do not have a copy of?

Mr. Anderson : We have copies of it.

The Master: I do not know how significant this all may be, but it is not particularly intelligible to me unless I have something to trace it up from. However, go on and do not delay it on my account.

Q. Tell us briefly what this schedule is intended for and what it means.

A. The schedule lists under seven groups the old unfunded bonds of the State of Virginia, or issues prior to 1861, which were held by the various schools and colleges in the State of Virginia. In—I have not the date before me, but I think it was in 1892, the State took up these old unfunded bonds and issued certificates for them. The State has been paying six per cent. interest on these bonds ever since the war, and this schedule groups them the same as in our Exhibit No. 9; and the interest is figured in accordance with that grouping, at six per cent. on each group, and the total extended to the right, showing that between January 1, 1872, and October 1, 1914, the interest would be $2,218,319,81, all of which has been paid except that portion which applies from July 1st, I believe, this year, to October 1st.

By The Master:

Q. The judge wants to know what the purpose of that schedule is. What is the object of it, so far as you know?

A. The schedule was prepared at the request of counsel; I do not know what the object was.

Q. That is, the use to be made of this you are not able to state?

A. I am not informed, no, sir.

By Mr. Holt:

Q. What was the aggregate of these bonds?

A. $864,842.03.

Q. So the principal is eight hundred and sixty-four thousand dollars and the interest thereon is two and a quarter millions practically?

A. Yes, sir.

Q. About what per cent. would that be?

A. About 250 per cent.—260 per cent.

Q. Is it not nearer 300 per cent?

A. Well, about 275 per cent.; I have not figured it.

Q. That is one place where the shadow is much deeper than the substance, is it not?

A. Referring to it in those terms, yes.

The Master: It extends over a greater space.

Mr. Holt: It seems to be thicker too.

The Master: Now, are there any other schedules showing computations that have not been handed to me?

Mr. Robinson: You have all that we have prepared. He has some other dates that he is going to prepare.

Mr. Holt: When are we going to get them?

Mr. Robinson: You will have to ask Mr. Potter that.

The Master: If these schedules are matters of computations really, and are really going to be used by counsel in their argument—this particular schedule, for instance, does not shed any great light on this controversy just now, because we do not know what purpose this is put in for—I am not intimating of course that it has not a legitimate purpose—but if these schedules are simply matters of computation, I doubt whether it is wise for me to delay this hearing simply to have the computations put in here.

Mr. Harrison: That is what they are.

The Master: Strictly speaking they are not evidence, when you come right down to it. If you have anything of that sort, —this hearing is closing.

Mr. Robinson: But we only began our case on Friday.

The Master: But you knew about it six weeks ago. I am not going to sit here and let witnesses compute all the

time, because strictly speaking that is not evidence, and we all know it. If you were trying this case in court you could not sit in here and ask the witness to make computations and figure things. The Court would say that the witness would state facts and the Court could make the computations. I have given you immense latitude on this question of computation, on both sides.

Mr. Holt: I think so, but I believe it was a good thing to do, your Honor.

The Master: I am not finding fault about it, except that I do not want to be delayed beyond today.

Mr. Robinson: The only computations that we are making are the computations that we were asked to make by the other side on the question of refunding these bonds. The other things are things that we have got to investigate, and Mr. Potter has got to have a couple of days to look at the record after we get through, to get the facts.

Q. Who owned and held these bonds aggregating $864,842.03?

A. The colleges and educational institutions shown at the left of this schedule.

By The Master:

Q. Under group No. 1?

A. No, the names are at the left of group No. 1.

By Mr. Holt:

Q. They were all Virginia educational institutions, were they not?

A. Yes, sir.

Q. The Virginia Military Institute that is set down there is a State institution, is it not?

A. I do not know.

Q. Don't you know, Mr. Potter, that it is supported by the State?

A. No, sir, I do not know.

Q. Well, don't you know that the University of Virginia, another one of them, is a State institution?

A. Judging from the name I should say that it was likely to have State support, but I do not know anything about it.

By The Master:

Q. Well, that exhausts your knowledge on that subject?

A. Yes, sir.

By Mr. Holt:

Q. Every one of these institutions is a Virginia institution, isn't it?

A. Yes, sir.

Q. Do you know how those institutions collected the bonds?

A. No, sir, with the exception one, I know one instance.

By The Master:

Q. Which one is that?

A. Washington and Lee acquired one block of bonds through it; they were presented.

By Mr. Holt:

Q. Now, you have the University of Virginia set down here at $23,200. If she held that many bonds and was a State institution, then the State must have provided her with those bonds, must she not?

A. I don't think that conclusion is necessary, no, sir.

Q. If she is supported by the State of Virginia would she not get these bonds through the one who supports her?

A. I cannot testify to that, I don't know.

Q. As I further understand your exhibit, when Virginia sat down and undertook to apportion this debt between the two states by legislative enactment or otherwise, she set apart one-third to West Virginia and assumed responsibility for the remaining two-thirds except in the case of these bonds?

A. Yes, sir, that is true.

Q. She did not undertake to apportion these at all?

A. No, sir.

Q. But because they were held by educational institutions within her own limits and territory she thought she would take care of those bonds herself?

A. I don't know the motives that actuated this arrangement.

Q. Well, she did this then thereafter, did she not, took care of them by issuing new bonds or certificates and delivering the certificates to these educational institutions in lieu of the bonds held by her?

A. Yes, sir.

Q. And none of the bonds were ever affected at all by any of the scaling acts which we have heard so much about in this case.

A. No, sir.

Q. I will repeat the question, Mr. Potter. You do not know whether any of these educational institutions were supported by the State of Virginia?

A. No, sir, I do not.

Q. You have no personal knowledge derived from records or otherwise on this subject?

A. No, sir.

Mr. Holt: We are through with Mr. Potter. Plaintiff's Exhibit No. 20 reminds us that we offered here a certificate of the Assistant Secretary of the Treasury of the United States, dated August 13, 1914, and another certificate upon the same subject, dated August 14, 1914, of the Assistant Secretary of the Treasury of the United States Government, relative to the settlement of the loan made by the State of Virginia to the Government of the United States; but something was said about a stipulation at the time, which stipulation has never been made, nor have these two certificates gone into the record. We would now like to have them put in as of the place where we first presented them.

The Master: They may be so inserted, so that they will appear at the precise place where they were apparently offered, and they will be printed just exactly as they read, unless the parties agree on a stipulation that will be satisfactory to West Virginia, giving their effect. In my judgment you ought to strike out these formal certificates.

Mr. Lilly: Has not that been printed?

The Master: It has not been printed in the final print. There is no reason why this formal certificate should go in, simply say certified—that is if you follow my judgment. Those go into the record. There is no occasion for this colloquy this morning to appear in the print. These will go into the record at the place where they were offered, and they will be printed just exactly as they read, certificates and all, unless the parties after this hearing adjourns agree on a stipulation that will shorten the record. I think that takes care of that.

Mr. Holt: My suggestion would be that these certificates be marked Defendant's Exhibits Y and Z.

The papers were admitted in evidence and marked Defendant's Exhibits Y and Z, September 12, 1914, C. B.

[These exhibits appear in Volume II at their proper place.]

The Master: Now, that completes the cross-examination of Mr. Potter. Has Virginia anything further to submit?

Mr. Harrison: Yes, sir. In the examination of the defendant's accountant reference was made and some testimony given from the report of the President and the Engineer and Superintendent of the Orange & Alexandria Railroad for the year 1861. I want to file at this point the President's report and the Chief Engineer and General Superintendent's report which are found in Document No. 17 of the Board of Public Works, beginning at page 35 and down to page 39 inclusive, and I will ask the stenographer to copy them into the record.

The same was admitted in evidence and marked Plaintiff's Exhibit No. 21, September 12, 1914, C. B.

Plaintiff's Exhibit No. 21 is as follows:

ORANGE AND ALEXANDRIA RAILROAD COMPANY. PRESIDENT'S REPORT.

In presenting the usual and annual statement to the stockholders, of the operations of the company for the fiscal year ending 30th September last, the directors regret their inability to make it more full and comprehensive as regards details.

The invasion of the territory of the state, and occupation of the city of Alexandria by the federal troops on the 24th of May last, deprived the company of its established general offices, disturbed its regular system of auditing accounts, and necessarily produced much confusion in the management of its business. The inconvenience caused thereby, as regards the records, will be only temporary, as sufficient data can hereafter be procured to supply any omissions or errors in the accounts, and the proper corrections can be readily incorporated in a subsequent report, if upon examination the necessity therefor should exist.

The accompanying letter of the general superintendent, H. W. Vandegrift, Esq., exhibits briefly the condition of his department, and the appended tabular statements of the treasurer (marked A and B) will show in detail the financial state of the company.

Receipts from transportation for the past year amount to the sum of $604,025.44.

The working expenses for the same period cannot be precisely stated at this time, but are estimated by the general superintendent at thirty-seven per cent. of the earnings.

At the last annual meeting the monthly receipts from May to October 1860, inclusive, showed an average return of $50,000 per month. If these receipts per month could have been maintained up to the 1st of May last, the aggregate revenue of the road for the year just past would have been exceedingly large; but unfortunately for the finances of the company, the result of the presidential election last fall, and the political alienation of the sections of the country, arrested the accustomed intercourse and travel between the north and south, and reduced the receipts for the months referred to down to the previous minimum amount.

The transportation of troops and military stores since the act of secession has afforded a very large business, and taxed to its utmost capacity the somewhat limited equipment of the road. This class of transportation, however, is only charged at half rates, and from its extent and peculiar quality,

causes much wear and tear, both of roadbed and equipment. Such precautions in the way of reduced rates of speed in running trains, and the most economical modes of transportation, have been adopted as would best protect the interests of the company under the circumstances.

Since the 24th of May last the road has not been operated by the regular passenger trains beyond Manassas station, its present eastern terminus.

Shortly after the evacuation of Alexandria by the state troops, sections of the track were destroyed and the bridges burned from Cameron to Bull Run, and twenty-two miles of the railroad in the direction nearest Alexandria surrendered to the control of the enemy, or rendered useless to the company.

After the battle of the 21st July, the streams between Manassas and Fairfax station were temporarily bridged again, by order of our military authorities, for the use of the army only; but recently this part of the line has been again abandoned.

This, together with the loss of the work shops and their furniture, and other property unavoidably left behind in Alexandria, will constitute a large account, which in justice ought at the proper time to be paid by the state or confederate government to the stockholders of the company.

Notwithstanding all the damage incurred, it is some satisfaction to the stockholders of the company to know, that but for the construction and existence of this railroad, the state could not have been defended as it has been, or its military requirements so efficiently supplied.

About one hundred and twenty-two miles of main line and the branch to Warrenton are now in daily operation by the trains. Some limited arrangements have been provided for shops at Gordonsville, which, with such facilities as are afforded at Lynchburg, will enable the company to repair and keep in order its rolling stock.

In maintaining repairs of roadbed, it is in contemplation of the directors to employ for another year slave labor upon a part of the line.

FINANCES.

The financial condition of the company may be briefly stated as follows, viz:

Total funded debt	$2,609,000.00
Total temporary debt	572,673.79

Of the debt and bills payable due by the company, it appears that the sum of $52,759.99 is owing to northern parties.

As this matter will be brought to the cognizance of the courts under the law of Congress, the company ought to set up its equitable right to retain this small amount, in view of the heavy losses incurred by the war, at least to that extent.

Against its indebtedness, the actual resources of the company may be stated as follows, viz:

Cash in banks, &c.	$ 40,637.42
Due by government,	161,903.72
Freight bills and accounts due by post office department and by express company,	22,183.38
Total	$224,724.52

To this add:

Individual subscriptions of stock uncollected	$ 23,437.09
Mortgage bonds of the several issues either hypothecated as collateral security, or on hand and unsold	691,000.00

Of this last all are of the last issue except $73,000.

The amount of debt paid during the past fiscal year, in cash, $185,918.38.

The new issue of mortgage bonds to the amount of $700,000 authorized at the last meeting of the stockholders to pay off the heavy existing floating debt of the company, has been duly prepared, but only a small amount so far disposed of. The company has paid up all the interest due upon its bonds of the several issues, where the coupons have been presented, except that part held at the north, the payment of which was arrested by Act of Congress, and public policy.

It may be proper to state in this connection, that the delay in paying the coupons of the company during the past summer, arose from the fact that the government failed to pay its bills

of military transportation for several months after their maturity and the company had no other resource. The interest was promptly met as soon as the collection referred to could be made of the government at Richmond.

In conclusion, the directors take pleasure in bearing testimony to the zeal, industry and efficiency with which the officers and employees of the company generally have discharged their ardous and responsible duties of the past year.

The transportation of troops and supplies for the army of the Potomac has entailed upon the company, since May last, a labor of vast difficulty and importance, the exigencies of which have been fully and faithfully met by those charged with its execution.

The general superintendent, Mr. Vandegrift, whose fidelity was most unjustly assailed, has, from the beginning to the present time, performed his whole duty.

The annals of railroad operations do not anywhere exhibit examples of such continuous laborious services as have been performed for months together by the men who have run the trains to and from Manassas station, and transacted the business of the road at that place, without a house to shelter them from the weather, or for purposes of rest, poorly supplied with necessary food, and the impossibility of obtaining assistance for their relief; by day and by night they have stood to their posts without complaint, and performed an amount of work scarcely to be conceived as within the compass of human efforts.

The thanks of the stockholders are especially due to the general agent at Manassas, Mr. James A. Evans, for the faithful and satisfactory manner with which he has discharged his ardous and responsible duties at that point. Much credit is due also to another agent of the company, Mr. W. A. Duncan, who rendered especially most valuable service, by the spirit and address which he displayed in reclaiming some valuable books and records of the company from the possession of the enemy, into whose hands they had casually fallen at Alexandria.

The directors indulge the hope, that before another annual meeting, the stockholders will again assume possession of

all their property, and be able to assert authority over their entire line to the city of Alexandria.

Respectfully sumbitted, on the part of the directors, by

JOHN S. BARBOUR, Jr., Pres.

Stockholders O. & A. R. R. Co.

ENGINEER AND SUPERINTENDENT'S REPORT.

Office Orange and Alexandria R. R. Co.,
Charlottesville, Va., Nov. 5, 1861.

SIR:

It is not possible for me to make a report in detail of the operations of the road in my department for the past fiscal year, or to give you the aggregate working expenses, owing to the fact that important books, containing that information from the 1st of October 1860 to the 1st of May following, are not in my possession. I can only estimate them from recollection, and by the operation since made, for information in a general way, and to show a comparison between them and the revenue.

I am quite confident that when the books are obtained, that they will not increase them over my estimate of two hundred and twenty thousand ($220,000) dollars; which gives a ratio of working expenses to revenue, of thirty-seven per cent., the revenue being six hundred and four thousand and twenty-five dollars and forty-four cents ($604,025.44), made up from the following sources, viz.:

From passengers	$206,668.85
Government troops	194,520.35
Government freight	67,104.34
Individual freight	92,137.43
United States mail	22,600.79
Confederate States mail	6,108.33
Southern Express	7,071.33
Adams' Express	6,846.95
News agency	305.00
Telegraph	662.07
Total	$604,025.44

We have sixteen locomotives belonging to us. One of them was undergoing repairs in the machine shop at Alexandria at the time of the invasion, and was in such condition that it could not be removed; and another, the "Fairfax," was regarded only valuable as old iron; a third, the "Fauquier," though brought out of Alexandria, has been of no service owing to her light weight and general uselessness—so that we have thirteen locomotives in actual use; and at this time they are all in running order. Since the 17th day of April these engines mostly have been without shelter, and depending upon a lathe and a blacksmith's forge for repairs.

It almost seems that they felt it to be their duty to keep themselves in order for the occasion, though much credit is due to those connected with the machinery and running department, for their skill and watchfulness.

Of course they are wearing considerably, and whenever we shall have time, will require both work and expense to place them in the condition they were in, at the commencement of the extraordinary demand upon them.

The road department has not been placed in as complete a condition as it would have been, had we been able to supply ourselves with iron rails and ties; but I consider it in good order, and with the materials on hand and procurable, can keep it so.

Three accidents have occurred to the trains during the year; one at Orange courthouse, on the 25th of May, caused by the passenger train running into a standing troop train on the main track, causing the death of one person, and injury to two persons: one between Gordonsville and Madison, caused by breaking of a coupling on a descending grade, and a collision between the two parts of the train, causing the death of two persons; and the third was near Rappahannock station, to an empty freight train, caused either by the breaking of a cord or a small bridge, or by some derangement of the cars upon the bridge, resulting in the breaking of three freight cars, but no injury to any one.

Great credit and praise are due to officers and men in our service, for the manner in which they have performed their

several duties, enduring the hardships of their various posts, without faltering or murmuring.

I regret that for the want of material I am obliged to make you so meagre a report; but I am gratified that the result of the operations of last year is the best that we have had since the opening of the road.

Respectfully,

H. W. VANDEGRIFT,
Ch. Eng. & Gen. Supt.

J. S. Barbour, Jr., Esq., Pres.

Mr. Harrison: In the original record in the testimony of Major Robert W. Hunter concerning the conditions of property in Virginia in the war period he referred to an article that would soon appear, it had not then been published, but was about to be published from Professor John W. Mallet of the University of Virginia.

Mr. Holt: That is the old chemist, is it?

Mr. Harrison: Professor of Chemistry of the University of Virginia, a great scientist with an international reputation. Professor Mallet was ordnance officer during the war with the rank of Colonel. The article that Major Hunter referred to he said contained data and information bearing upon the subject that he was then testifying to. We have that article which was published in the Richmond Dispatch on Monday, June 13th, 1909. Dr. Mallet has been dead for two or three years, and we would like to read into the record an extract from it, which I will read without it being taken down at this point.

Mr. Lilly: I would like to suggest that the other day Mr. Glenn swore to the conditions of the roads, and on cross-examination he had never been more than twenty miles. It is unfortunate that we do not know how much Professor Mallet traveled.

The Master: Is there any objection to this extract?

Mr. Harrison: It is part of the history of the times.

Mr. Lilly: We feel constrained to object to that. It is a newspaper article.

The Master: I am going to do this about this piece of evidence. Of course I have not my mind fresh about the rules that relate to testimony of this character, and we are all familiar with the general situation. My impression is, Mr Harrison, that it is not admissible, but I am going to admit it *de bene* with notice to you that if when my attention is called to the authorities my judgment is it is not admissible, I shall simply exclude it from consideration. You will have to take that chance.

Mr. Harrison: All right.

The Master: Of course it is not doing me any harm, if I exclude it from consideration. I make this suggestion. It is not final, I shall admit it with the understanding that if I ultimately decide that it is not competent within the well recognized rules, I shall exclude it, and I simply make that suggestion so that if you want to cover the ground in any other way anticipating that it may be excluded, you have an opportunity to do it.

Mr. Harrison: All right.

The Master: But I will admit it with that suggestion.

Mr. Holt: Your Honor, in order to illustrate that character of evidence—

The Master: It is all disposed of, Judge. We won't take any time.

Mr. Holt: This is only two lines in a morning paper under the title of "What was news fifty years ago," taken from the Richmond Dispatch, September 12, 1864, "The net earnings of the Virginia and Tennessee Railroad Company for the year ending June 3rd was $1,157,551.33."

The Master: Do you want to offer that? If you do I shall admit it, subject to the same suggestion. Of course this case is not being tried by a jury.

Mr. Harrison: Let it go in with the date.

Mr. Holt: One other line from the same news of fifty years ago. "Gold was quoted in New York on September 7th at 241."

The Master: What year?

Mr. Holt: 1864.

Mr. Harrison: The date is very material. What is the year?

Mr. Holt: It is from the Richmond Dispatch of September 12, 1864.

The Master: It is one of these familiar columns of "Fifty years ago today."

Mr. Holt: That is it.

The Master: Now, do the West Virginia people offer it?

Mr. Holt: Not now.

Mr. Harrison: We would be glad to have it in if you want to have it in.

The Master: Now, proceed.

Mr. Harrison: I want the stenographer to get this.

The Master: Just hand it to the stenographer and he will put it in.

Mr. Harrison: We offer from the Times-Dispatch, Richmond, Virginia, Sunday, June 13, 1909, to be known as Plaintiff's Exhibit No. 23, the following extract from article headed "Work of Ordnance Bureau of the War Department of the Confederate States, 1861-1865. By J. W. Mallet, Ex-Lieutenant Colonel of Artillery and Superintendent of Confederate States Ordnance Laboratories:

"Besides the immediate work of the Ordnance Bureau it had to undertake a great number of most onerous outside tasks rendered necessary by the disorganized condition of society. While indispensable help was obtained from the railroads, they had in turn to be helped, and largely, in making repairs to their rolling stock and tracks. In fact, a silent partnership grew up, and materials and labor had to be used almost in common for a common end. It is easy to see how vitally necessary it was that the railroads should be kept going, but few people now seem to be aware how nearly exhausted at the close of the war the railroad system of the south had become. Almost every yard of siding that could be spared had been taken up, to patch the main lines, less important roads had been despoiled to help out the greater ones, fractional parts of wrecked locomotives had been built up into new ones of more or less feeble constitution, cars had been mended until they would

hardly hold together, and it may not unreasonably be doubted whether, aside from other sources of weakness, this alone might not in a few months more at furthest have put an end to the maintenance of Confederate armies in the field."

Mr. Harrison: I want to ask Mr. Potter a question.

By Mr. Harrison:

Q. Mr. Potter, please refer to the original record, beginning at page 1053 and continuing from that page to page 1065 inclusive, being an exhibit denominated Defendant's Exhibit, and headed summary of cash receipts and disbursements of the Commonwealth of Virginia from March 19, 1823, to January 1, 1861. Please state what that exhibit contains with reference to the assets.

The Master: Don't you cover everything when you give notice that you rely on that exhibit? Have you got any further examination? This is in the case, it is not necessary to prove it by Mr. Potter.

Mr. Harrison: I want to prove that that exhibit contains the assets that are enumerated in the supplemental answer.

The Master: Does not the exhibit show it?

Mr. Harrison: I think it does.

The Master: Just give notice that you propose to refer to it. Mr. Potter cannot strengthen that exhibit any. Don't that cover your ground?

Mr. Harrison: I think it may be well to have him answer that question.

The Master: All right, go ahead.

By The Master:

Q. The question is, does it cover the items referred to in the supplemental answer?

A. It covers the cost of all of the assets treated in the supplemental answer.

Q. The exhibit shows for itself, does it not, what it covers?

A. Yes, sir.

By Mr. Holt:

Q. It does not show the value or the disposition?

A. No, sir.

The Master. That exhibit will be read by everybody. You cannot add anything to it and you cannot take anything from it.

Mr. Holt: Well, I was asking for information.

The Master: Anything else, Mr. Harrison?

Mr. Harrison: No.

The Master: Of course it is understood that this original record can be used by either side at the argument.

Mr. Harrison: Yes. I have nothing further to ask Mr. Potter, but I would like to know—are you gentlemen through?

The Master: It is up to you. Are you through.

Mr. Harrison: Would it be agreeable to you to take the deposition of Mr. Axtell?

The Master: Have you anything else?

Mr. Harrison: I do not think we have.

The Master: Then the only thing left is this question about the testimony of Mr. Axtell. What is your suggestion about that, Mr. Harrison? ffl

Mr. Harrison: We will take his deposition, fix a date at some time that will suit the convenience of the other side, as soon as possible.

The Master: What have you to say about that on the other side?

Mr. Harrison: I hoped they would be willing to save themselves the trouble by letting this letter go in.

The Master: They have stated they will not admit that letter without cross-examination.

Mr. Lilly: I do not think we ought to be expected to.

The Master: You need not discuss that part of it. The only question now is what have you to say as to the suggestion about the deposition.

Mr. Holt: My feeling about that is this: We have been here for several weeks. It is a pretty long journey, for a sick man at least, and Mr. Axtell has been in this town to my personal knowledge frequently during this inquiry. And why we should be dragged back here simply to take his deposition, when it could have been taken here during this time, I am unable to understand.

Mr. Harrison: I can explain that, Judge. It is true we have been here several weeks. But all of that time has been occupied by your side, by the putting in of your evidence, and we have had barely two days, and have gone under whip and spur to expedite matters and to save ourselves and you the trouble of prolonging this investigation beyond this week. And under such disadvantages have we labored in order to do that that we have had to receive schedules prepared here at the bar, without any opportunity for previous examination. It was an embarrassing thing to examine the witness, because of the lack of opportunity first to familiarize ourselves with the details. Now, I do not think in fairness we are subject to criticism for not having rushed Mr. Axtell in during the two days that we have been rushing to get in all of our testimony. We have done the best we could. We have occupied two days, where you have had several weeks. Now, we are in this situation; we want his testimony. And as much as we regret the necessity of having to trouble ourselves or you to take it, I do not see how we can avoid it.

The Master: Of course the testimony of Mr. Axtell, as indicated by that letter, must have been as obvious after this supplemental answer was filed as it is now, because it relates fully to this James River and Kanawha Canal Company. It certainly is not dependent upon any schedule that anybody has put in. He does not know anything about the schedules, and his information is not of that character. Now, there cannot be any doubt about that fact, as it seems to me, because on the basis of preparation, his testimony must have been known to be as significant then as it is now. Of course if he had been here I suppose we could have had his attendance almost at anytime; we could have arranged that. I suppose you have not been able to get in touch with him since we adjourned last night?

Mr. Harrison: I called his office up the first chance I had, and I was told he left town last night.

Mr. Lilly: May I ask the date of that letter, Mr. Harrison?

Mr. Harrison: I think it is July 30th.

The Master: It is rather an embarrassing situation. I do not want to leave either party here in a position where there

is going to be lacking of something that they think is material. How does this suggestion take care of the situation, what is the reason Mr. Axtell cannot be brought to New York and examined when we get there for argument? Everybody knows what he is expected to testify, and it relates to simply one item. Can you do that?

Mr. Harrison: Anything the Court suggests.

The Master: If the other side are willing to agree to that, I think that under the circumstances the plaintiff ought to accede to it. Of course I know the difficulties about a case of this size and magnitude, but when you come to this specific concrete proposition it is pretty difficult for me to find that Mr. Axtell could not have been discovered.

Mr. Harrison: If your Honor please, there is no question about the discovery of Mr. Axtell and the accessibility of Mr. Axtell. I did not know until ten days ago that he had written a letter and made some report in connection with the James River and Kanawha Company. I did not see the letter until about ten days ago, and then I made up my mind that the first opportunity I would get, if these gentlemen would not admit his letter, I would get him here. My mind has been occupied and all of us here have been occupied with other things. It was a mere incident in the examination.

The Master: I do not want to give a direction that is going to deprive the Virginia people of the opportunity to adduce this examination.

Mr. Harrison: If your Honor thinks we are not entitled to examine him, that is all right. Let it appear on the record.

The Master: I have not intimated that I do not think you are entitled to examine him.

Mr. Holt: I think we can relieve the situation by a suggestion. One suggestion by way of introduction, first. Of course any time that they would have brought Mr. Axtell in here your Honor would have stopped and heard him, whether in place or out of place, just as our cross-examination was stopped yesterday for the purpose of examining Mr. Williams and the other gentlemen. The Master has accommodated us in every respect and we have made no objection to the order

of proof at all. But we are perfectly willing, and this entirely removes the objection I have to coming back here and taking this testimony—we are willing if they will bring him to New York at the hearing to let his deposition then be taken, giving us an opportunity to cross-examine. I am given to understand that Mr. Axtell is frequently in New York.

Mr. Harrison: I will bring him to New York if he will come. Mr. Axtell is a busy man.

The Master: Of course he is a man of substance and business and I do not think you will have any trouble in that respect.

Mr. Harrison: I do not know whether I will or not. I cannot answer for that except to say that I will do it if I can.

The Master: My judgment is that there is not going to be any doubt about his being accommodating enough to be there. We will leave the matter in that way, that Mr. Axtell will be examined prior to the beginning of the argument in New York.

Mr. Harrison: I do not want to be confined to this proposition, that we cannot examine him unless we can examine him in New York.

The Master: Of course when we reach that condition if you are in a position of embarrassment I will take that up then, but Mr. Harrison will do everything that he reasonably can do to get Mr. Axtell there. Have you anything more, Mr. Harrison?

Mr. Harrison: It is understood that these other exhibits are being prepared?

The Master: Yes, absolutely. I will have the printers keep the case in type so that when we get there and get Mr. Axtell's examination I will have it put right in, so that so far as the record is concerned there will not appear to be any hiatus and it will be part of the original record.

Mr. Robinson: Some arrangement will be made so that we will be given copies of this record as quick as it will be ready?

The Master: I am going to try to make that arrangement.

Mr. Holt: Now, your Honor, we are ready in about five minutes to complete.

The Master: Go ahead then.

Mr. Lilly: If your Honor please, we have the blueprints and maps showing the dock property and towpath, etc., of the James River and Kanawha Canal and also the location of the Richmond & Allegheny Railroad Company with reference to that, and it consists of something like two hundred maps, and of course we do not want to encumber the printed record unless it is insisted on, but we want to introduce it and let the Master inspect it, and use it for argument.

Mr. Holt: I suspect the gentlemen will agree that it may be omitted.

The Master: It is admitted for that purpose, and if Mr. Anderson says they are genuine blueprints, that is all that is necessary.

J. K. ANDERSON,

recalled for further examination in behalf of the defendant, testified as follows:

By Mr. Lilly:

Q. Mr. Anderson, I note you have some blueprints here with reference to the Richmond & Allegheny Railroad. Where did you get them?

A. I received them from the Chesapeake & Ohio Railroad Company through their chief engineer in August, 1914.

The Master: All that is necessary for him is to say that they are genuine duplicate blueprints of what they purport to show.

Mr. Lilly: They are the original blueprints.

The Witness: They are the blueprints taken from the original map tracings or tracing of the map entitled "Property Maps of the Richmond and Allegheny R. R., Richmond to Clifton Forge, including the Buckingham R. R. and the Lexington Branch. Property acquired by the R. & A. R. R. Co.—yellow."

The Master: They are what they purport on their face to be?

The Witness: With these exceptions, your Honor, that they only show the line of road from Richmond to Buchanan and up the Lexington Branch to Lexington or close to it.

Q. These are the original blueprints that you got from the Company, are they?

A. Yes, sir; I compared them with the tracings and they were made from the original tracings in the possession of the company.

By Mr. Holt:

Q. You made the blueprints?

A. No. sir, they made the blueprints and furnished them to me.

Q. They are the blueprints that the railroad furnished you?

A. Yes, sir.

By Mr. Lilly:

Q. What are the first two sheets of the blueprints? Just tell the Master what the first two sheets are.

The Master: Don't they show for themselves?

Mr. Lilly: I want to get it in the record.

A. I think that perhaps a word of explanation would be better. Sheet No. A shows the lower end of the dock property in the city of Richmond, Virginia. Sheet No. B shows the upper end and a portion of the basin or lower end of the old canal property. Sheet No. O shows the lower end of the canal property.

Q. Just file those three and mark them Exhibits AA, BB, and CC.

The Master: These will be placed in the custody of Mr. Bonynge and he will take care of them.

Mr. Lilly: And we also wish to file the title page as DD.

The maps were admitted in evidence and marked Defendant's Exhibits AA, BB, CC, and DD, September 12, 1914, C. B.

Q. What are the rest of these blueprints, Mr. Anderson?

A. The remainder of these sheets show the alignment of the old R. & A. from the first mile post or station O to Buchanan and up to Lexington on the branch line.

Q. Do they show the amount of new right of way that it was necessary for the R. & A. to acquire in order to construct this line?

A. They do. The amount which they acquired is simply checked off in yellow check marks, the old James River and Kanawha right of way being left uncolored, but originally colored red.

Q. I understand these blueprints show the original canal and towpath and the location of the Richmond and Allegheny Railroad center line, and any additional right of way that was necessary for the R. & A. to purchase in order to construct its road?

A. Yes, together with the locks and other structures.

Mr. Lilly: We will file those, marked R. & A. Exhibits from O to 195 inclusive.

The Master: An exhibit consisting of pages from O to 195, one exhibit.

The Witness: And on the Lexington Branch, from 174 to 195.

Q. Mr. Anderson, on page 1240 of the typewritten record you were asked certain questions with reference to the Manassas Gap Railroad, and you have extended your answers. I wish you would submit a copy to the gentlemen on the other side, and we would like to have these two sheets placed in the record where they should have been the other day, simply asking the amount invested at certain times in the construction of the road and when it first began construction and its progress up to 1860.

A. I find in Senate Journal & Document 1852-53, filed in the Virginia State Library at Richmond, Virginia, Document 24 on page 8, which is a report of the Senate Committee of Finance & Claims relative to the debt of the State from September 30, 1850, to September 30, 1852, and to the receipts and disbursements of the Treasury during years 1852 and 1853, and under a separate heading in said report, entitled "Funds & Resources of the State on 30th of September, 1851, stocks in improvement companies not completed—

Manassas Gap Railroad Co. .....$38,981.00."

I also find in this same document, on page 9, loans obtained by the Board of Public Works to pay subscriptions which have been made to the following companies:

Railroad Companies: $2,043,144.00
Manassas Gap Railroad Co. 176,775.54

I also find in said library, Document No. 17 for the years 1853 and 1854, page XXII, Report of the Board of Public Works to the General Assembly, dated January 28, 1854, the following data:

Manassas Gap Railroad
Length 112
Completed 42 1-2
In progress 69 3-4.
Capital stock authorized $2,400,000.00
Payment made by State 502,000.00

I also find in the same document No. 17, page 287, which is a report for the fiscal year ending September 30, 1853, the following extract from the proceedings of a meeting of stockholders:

"Pursuant to public notice, the stockholders of the Manassas Gap Railroad Company met at Liberty Hall, January 12, 1853, and organized."

Also in the same Document No. 17, page 304, I quote from the President's Report to the stockholders:

"The trains have been running to Markham, 38 miles, since 10th of December last, and for a day or two past to the Summit Cut. Some few days will elapse before the obstacles in the way of access to the station at the Summit, Linden, can be removed. This station is at the summit of the Blue Ridge, the point of diversion of the eastern and western waters, distant 42 miles from the junction and 70 from Alexandria on the east, 8 miles from the river, and 18 miles from Strasburg on the west.

Provision was made for the completion of the road to this point as early as May last."

Delay caused by failure of delivery of rails from England and a riot in June last among the hands at Summit Cut, which was suppressed by armed patrols and those remaining were kept at work by guard since the riot.

The road from Linden to Strasburg is all under contract and some sections completed. Mr. Goldsborough calculates

to have the road bed ready for superstructure by June first next and track ready for trains to Strasburg by the first of September, or sooner."

And on page 312, Document No. 17, I quote as follows:

"Expended on construction from its organization on the 1st day of August, 1850, to the 30th day of September, 1853—

Total amount expended.....	$1,166,573.84
Less other items—	
$59,565.08	
92,000.00	
4,021.59	155,586.67
Actual Cost Expenses.....	$1,010,987.17"

And on page 313, Document No. 17, from August 10, 1852, to September 30, 1853—

"Disbursed on construction, etc.....	$470,925 72
Spent on construction, etc., from August 1, 1850, to August 10, 1852..	540,061.45"

From this I conclude that the work of construction began in 1850, or early in 1851.

Mr. Holt: I will ask you to refer to the report of the president of the Richmond & Alleghany Railroad for the year 1882, and will then ask that it be read into the record, the annual report, Richmond & Alleghany Railroad Company, ending September 30, 1881.

The Master: Hand the duplicate of it to the other side.

Mr. Holt: I will do so.

Mr. Anderson: We object to the competency of this evidence. I do not know how he can say anything that is evidence.

The Master: There is quite a good deal of the same character of testimony in the record. There are a good many reports of presidents. All these are subject to objection. Of course all these reports of presidents and anything else, if you can satisfy me that it is not competent evidence, out it

goes. This is open to every objection. If the report of the president is admissible for one purpose, probably it is for another.

Mr. Holt: The report is as follows:

ANNUAL REPORT

THE RICHMOND & ALLEGHANY RAILROAD CO.

Ending September 30, 1881.

This printed volume is in the possession of Mr. Decatur Axtell, Vice-President of the Chesapeake & Ohio Railroad Company, of Richmond, Virginia. I quote as follows from page 5, &c.:

"To the Stockholders:

The Board of Directors respectfully submit herewith their report for the fiscal year of the company ending by law of State, 30th September, 1881, with the accompanying statements.

The report of the General Manager is added. The fiscal reports of the James River & Kanawha Company, and the Buchanan and Clifton Forge Railroad Company, are presented herewith, and will be published by this Company.

The Richmond and Alleghany Railroad Company acquired the properties, works and franchises of the James River and Kanawha Company, and the Buchanan and Clifton Forge Railway Company, at a cost, in stock and cash, of $6,389,511.93, thus securing legal right of way for its railway lines, basin and docks in Richmond, and other property, including liens of $1,537,381.42.

The Company acquired rights of way needed by improved location at a further cost, in cash, of $199,097.83. These disbursements have been arbitrarily divided "Distributed" between Richmond dock property, valued at $1,000,000, and rights of way and franchise, $5,588,609.76. Total $6,586,609.76.

Under an agreement between the trustees of the first mortgage and this Company, provision was made out of proceeds of first mortgage bonds for existing liens, which liens were to be acquired by the trustees and held uncancelled as a muniment of title and for further assurance.

The amount of these liens outstanding was	$1,537,381.42
Of which the Trustees on the 30th September, 1882 had acquired	1,393,637.66
They have since delivered to the State of Virginia	74,743.04
	$1,318,894.62

The amount of liens outstanding has been diminished by State bonds for maintenance of convicts employed on B. & C. F. Ry.	79,128.15
County of Rockbridge bonds acquired by completion of road	50,000.00
City of Lynchburg bonds acquired by water works contract	35,000.00
	$ 164,128.15

The amount of liens now outstanding, as held by First Mortgage Trustees	$1,318,894.62
Held by others	54,358.65
Total outstanding	$1,373,253.27

CONSTRUCTION.

The main stem, Richmond to Williamsons (with arrangement for temporary use of track of Virginia Midland through Lynchburg, as contemplated by statute), was completed 12th

September, 1881; the branch to Lexington 14th October, 1881.

The road was opened under the auspices of the Board of Public Works of the State of Virginia on 15th October, 1881, and upon certificate of the consulting Engineer, in presence of passengers brought to Howardsville by trains from Richmond, Williamsons and Lexington, the final instalment of U. S. bonds, deposited as pledge for fulfillment of statutory contract, of 5th March, 1880, was delivered to the Company. The statutory period for completion of 50 miles west from Richmond, and 56 miles from Williamsons to North River, in all 106 miles was 5th July, 1881; these sections were completed 13th April, 1881, at which date 146½ miles on both sections had been completed.

The date of completion of 250 miles was 15th October, 1881.

OPERATION AND INCOME.

During period of construction neither canal nor railroad could be operated profitably, as the energies of the organization and its equipment were largely engaged in hastening construction. The severity of the winter of 1880 greatly retarded the work, and the canal from a source of revenue became one of expense, the result showing a charge of more than ten thousand dollars on this account. On the other hand, the facilities for the transportation and distribution of material afforded by the canal may be safely estimated to have saved the construction account a much larger amount. The receipts for water power were nine thousand dollars.

These accounts present only sums received from the public, and no constructive charges against 2,702,000 mile-tons of construction material transported have been credited as earnings. The materials have been charged only with the sums disbursed for transportation and labor.

The resulting balances show a net profit, from operation of the railway, of seventeen thousand dollars during the period of constructions, and of nearly thirty-eight thousand dollars from the Richmond docks. The total general expenditures

from acquisition of the property were sixty-one thousand dollars, leaving a final charge to construction account of $6,002.92.

WATER POWER.

An engineer of water power has been appointed and under careful supervision it is believed that this department of the property will become an important one. Little has been done, or could be done, while the pressure of building absorbed attention and resources. When the property was acquired rents were in arrears, obsolete methods prevailed in use of water, and litigation and claims impaired the value of existing grants. Measures are under consideration for the material improvement of the power of Richmond.

The power owned by the City of Manchester has been acquired by this Company.

The difference between the authorities of Lynchburg and the canal company, as to their several rights and liabilities at that point, have been happily adjusted—The Company builds a substantial stone dam, toward the cost of which the city contributed by releasing the debt and lien of $35,000 upon that level, and the rents, held as collateral, come to this Company.

One dam (Varneys Falls), not needed for water power has been destroyed, others will follow doubtless. Those whose maintenance will be justified by the power supplied, must under requirements of law be furnished with fish-ways.

CONSOLIDATION.

The important events in the history of the Company are, first, the contract entered into with the Ohio Central Railroad Company, of Ohio, the Atlantic & Northwestern Railroad Company, of West Virginia, and this company, for the consolidation of the three companies; the subscription of five million dollars, secured for completion of existing lines; extension of the Ohio Central to the Ohio River; bridging of the Ohio and construction of railroad to Charleston, West Virginia.

The special meeting of Stockholders, held in Richmond on 23rd June, ratified this contract by a stock vote of 47,231 shares of the 50,000, all in favor of the proposition.

The projected route of the extension is from Eagle Rock, seventeen miles north of Buchanan, following the valley of Craig's Creek, and by tunnel of one mile to the valley of Sinking Creek, a tributary of New River. The route admits of a line with maximum grade of thirty feet. The length of the entire lines, consolidated and to be constructed, may be stated at 800 miles.

The basin property in Richmond is the site selected for local freight and passenger stations. Application has been made to this company for accomodation for other railways, and a union station may be conveniently located here.

The connection between this basin and the docks by trestles and bridges is in progress, and will be completed about May 1, 1882. The dam at Lynchburg, above referred to, it is hoped will be completed by August 1, 1882. Both are expensive structures.

CONSTRUCTION.

(p. 10)

Excepting along Maiden's Adventure Pond, Tye River Pond, and about a mile on the south side of James River, near the Joshua Falls Bridge, the track was everywhere laid upon the tow-path between Richmond and Lynchburg.

It has since been removed from the tow-path in several places where the curvature was excessive, and placed upon unobjectionable alignment. This work could only be done economically after the suspension of navigation upon the canal.

Between Lynchburg and Buchanan and Lexington newly-graded roadbed is almost continuous and is nearly everywhere higher than the tow-path. From Buchanan to Williamsons this road was built upon the unfinished work of the Buchanan and Clifton Forge Railroad. The character of the work has been commended by competent critics, and there is no doubt that

after the new embankments become settled the expenses of maintenance can be kept at a very low figure. Experience with the maintenance of the track upon the tow-path has fully sustained the expectations of those who have asserted its advantages as a roadbed.

At Richmond a commodious freight building with necessary track is under construction in the basin. A timber trestle has been decided upon, extending from Eleventh Street to Nineteenth Street, upon property owned by the company, excepting the station near to the Richmond & Danville R. R., across which right of way has been obtained under an agreement requiring this company to span the yard with two iron bridges resting on three masonry piers.

A.

CONDENSED BALANCE SHEET.

September 30, 1881.

ASSETS.

Rights of Way and Branches...	$5,588,609.76	
Cost of Road.....	4,607,217.53	
Cost of Equipments.....	453,312.78	
Richmond Dock Property.....	1,000,000.00	
Real Estate.....	149,016.29	$11,798,156.36
J. R. & K. Co., and B. & C. F. Ry. Co. Liens, with Trustees 1st Mortgage.....	1,393,637.66	
Bills Receivable & Open Accounts	107,721.03	
United States Bonds at par.....	142,000.00	
Cash	45,373.37	
Material	23,359.84	
	$13,610,348.26	

LIABILITIES.

Capital	$5,000,000.00
First Mortgage Bonds	4,925,000.00
Second Mortgage Bond	729,000.00
Alleghany Car Trust Series "A"	170,000.00
J. R. & K. Co. and B. & C. F. Co. Liens	1,537,381.42
Accrued Interest (not due)	105,725.00
Bills Payable	744,186.71
Accounts Payable (Pay Rolls, &c. September	298,955.13
	$13,510,248.26

B.

INCOME ACCOUNT.

EARNINGS.

Rents	$ 545.20
Water Rents	9,062.45
Canal Earnings	12,468.52
Dockage	47,533.33
	$ 69,609.60

EXPENSES.

Canal and Water Power	$ 22,728.97
Richmond Docks	9,666.84
	$ 32,395.81
	$ 69,609.60
	32.395.81
	37,213.79

SUB ACCOUNTS.

Basin Grading.....	$ 11,474.96	
Trestles	7,286.84	
Track	3,511.24	
Freight Depot Building....	11,665.18	$ 33,938.22

MISCELLANEOUS.

A series of maps are being prepared which will, when completed, show the complete alignment of the road as well as the boundaries of the rights of way and other real estate belonging to the company.

Much attention has been given to the work of collecting and arranging the evidences of title to the rights of way and the numerous outlying pieces of real estate that belong to the company; when it is remembered that some of these titles date back a century, and that many of the original papers were destroyed by fire at the time of the evacuation of Richmond in 1865, some idea may be formed of the amount of painstaking labor involved.

Nearly everywhere below Lynchburg the canal intervenes between the track and the hills and thus affords protection. The tow-path has proven a most excellent roadbed, which is greatly conductive to economy in maintenance. Free from undulating grades the road admits of steady rates of speed by passenger and freight trains and enables quick time to be made without the dangers and discomforts of rapid descents and slow and expensive ascents of gradients, advantages seldom possessed by railroads as ordinarily constructed. The only drawback to these advantages is the sharp curvature in a number of places.

To meet the obligation of existing losses the water must be maintained in the canal for about seventy miles between Richmond and Lynchburg and for about eight miles above the latter city. The dams furnishing water and the canal banks have needed but slight repairs during the past year; but mainte-

nance of a supply of water for such a distance involves much risk to the road bed, and aside from the risks it is unprofitable to keep up long levels to supply the wants of small consumers. The conditions are very different from those which obtained when the canal was used for navigation. The supply of power to wayside mills was incidental and the revenue therefrom clear gain; now the petty rentals cut a small figure in the added cost of maintenance which they involve. For these reasons the Receivers have decided to grant new leases at points near the dams only, a conclusion further warranted by the fact that manufacturing enterprises of importance, such as should be fostered, must needs locate near the source of supply.
(P-58.)

The Receivers have caused inducements to be offered to manufacturers to the end that some of the vast amount of power now idle at the numerous dams may be put to some good work that will aid in the development of the country and of the road: but thus far no results have attended the efforts, except in the re-opening of the large iron and nail works above Lynchburg.
(P-59.)

In the minds of the promoters of the road and the early investors, the value of the Richmond docks, the water power and the minor outlying parcels of real estate, was rated very high. It is probably safe to predict that, if rightly managed, these properties will ultimately justify the early expectations; but it should be kept in mind that, like any large estate, the value of which is largely potential, they will require time, watchful care and a sacrifice of immediate gains, if they are to be made to realize their best possibilities.

CROSS EXAMINATION

By Mr. Anderson:

Q. Mr. Anderson, do you know anything as to the condition of the Manassas Gap Railroad in 1861?

A. Nothing at all.

Q. Do you know anything at all as to its condition on June 20, 1863?

A. No, sir.

Q. Do you know whether in fact it was completed until after the war, to Harrisonburg?

A. No, sir.

Q. Do not the facts which you have discovered indicate that it was not completed to Harrisonburg?

A. I so stated in my testimony, that it was completed to Mount Jackson, from such information that I could obtain and was under construction to Harrisonburg, from Mount Jackson to Harrisonburg.

Q. You have no personal knowledge as to its condition or whether it was completed to Harrisonburg in 1861 or 1863?

A. No, sir.

The Master: He was not born at either of those dates, so he could not know anything about that.

Mr. Anderson: That is all.

Mr. Holt: We read into the record, your Honor, an act of the General Assembly of Virginia, an Act to convert the branch of the Northwestern Bank of Virginia at Jeffersonville into a Separate and Independant Bank, passed March 13, 1862, and found in the Acts of the General Assembly of the State of Virginia, passed in 1861-2, found at page 90 of the book referred to, as follows:

Chap. 75.—An Act to convert the Branch of the Northwestern Bank of Virginia at Jeffersonville into a Separate and Independant Bank.

Passed March 13, 1862.

Whereas the armed occupation of Northwestern Virginia, by lawless enemies of this state, has entirely destroyed all business intercourse and relations between the Northwestern Bank of Virginia at Wheeling and its branch at Jeffersonville, to the great detriment of the state and loyal stockholders, and it seems proper under the circumstances to dissolve the connection heretofore subsisting between said bank and its

branch at Jeffersonville, and of authorizing the latter to transact business as a separate and independent corporation:

1. Be it therefore enacted by the General Assembly, that the branch of the Northwestern Bank of Virginia at Jeffersonville be and the same is hereby constituted, created and incorporated a separate, distinct and independent bank, under the corporate name of Graziers Bank of Virginia; and all the power, control, direction, supervision, relation and connection of said Northwestern Bank of Virginia over and with the said branch at Jeffersonville, are hereby dissolved, abrogated and annulled.

2. All the assets held by said branch (embracing all bills and notes discounted, whether the same be in suit, protested, due or maturing, all judgments, balances due on accounts current, all money, either in coin or currency, all evidence of debt or other securities, all real estate, and every right and interest) are absolutely vested in the said Graziers Bank of Virginia; and in every case where suit has been instituted in the name of the Northwestern Bank of Virginia for the recovery of money or other thing, to which said branch is entitled the suit so brought shall be prosecuted in the name of the Northwestern Bank of Virginia, for the use and benefit of said Graziers Bank of Virginia; and in every case where suit shall hereafter be instituted for the recovery of money or other things belonging to said branch, the suit shall be in the name of said Graziers Bank of Virginia.

3. The said Graziers Bank of Virginia is subject to all the liabilities of the said branch, except so far as the said liabilities are modified by the following sections of this act.

4. The said Graziers Bank of Virginia shall in no event be required to account to the said Northwestern Bank of Virginia for any portion of the net profits or contingent fund of the said branch, nor to contribute to the payment of, or pay out of the assets of said branch, or otherwise, to any stockholder, billholder or creditor of the said Northwestern Bank, any sum or sums of money which any such stockholder, billholder or creditor may be entitled to demand and have of said Northwestern Bank of Virginia.

5. At any time within three months from the passage of this act, any loyal holder of stock in the Northwestern Bank of Virginia, whose stock in said bank was purchased through the said branch, or whose dividends have usually heretofore been credited to him at said branch, may return and assign to said Graziers Bank of Virginia such stock, and demand and receive in lieu thereof a certificate for a like number of shares of stock in the said Graziers Bank of Virginia.

6. As soon as may be after the expiration of the said three months from the passage of this act, the governor of the state shall cause certificates of the stock held by the state in the said Northwestern Bank of Virginia, for an amount equal to the balance of the capital stock of said branch, not exchanged under the previous section, to be in like manner returned and assigned to said Graziers Bank of Virginia, for a like number of shares of the stock thereof.

7. The Graziers Bank of Virginia, hereby established, shall be required to redeem, from loyal citizens of the Confederate States of America, in notes of its own issue, all such notes of said branch as may be in their possession at the passage of this act; provided the same be presented in six months after notice of this provision shall have been published for one month in some weekly newspaper published in the city of Richmond; and provided further, the amount offered for redemption shall not exceed one hundred and eighty thousand dollars.

8. The legislature reserves the power to provide, after the termination of the war with the United States, the extent, mode and time of redemption by said Graziers Bank of Virginia, of any outstanding notes of said branch, with which, according to the principles of equity, justice and right, it is chargeable. But as it is represented to this general assembly that the said branch has a special deposit of twenty-four thousand dollars in gold with the said Northwestern Bank of Virginia, heretofore made by said branch to meet the redemption of its notes; and as notes payable at said branch may have been issued by the said Northwestern Bank of Virginia, which have not been reported to said branch, nor charged to said Northwestern Bank of Virginia, and which it would be evidently unjust to

require the said branch to redeem, it is hereby expressly provided and enacted, that the whole amount of circulation of the said branch, which the said Graziers Bank of Virginia shall be required to redeem, under the provisions of this act, and of any subsequent act of the legislature, taken collectively, shall not exceed the balance of the circulation of said branch, after deducting therefrom the sum of twenty-four thousand dollars on account of said special deposit, and also any amount or amounts of circulation payable at said branch (if any such there be), issued by the said Northwestern Bank of Virginia, of which the said branch has not heretofore received notice from said Northwestern Bank of Virginia.

9. The cashier shall forthwith, after the expiration of three months from the passage of this act, out of the surplus or contingent fund of the said branch, pass to the credit of the stockholders of the said Graziers Bank of Virginia and to the state, a dividend of ten per centum upon their stock issued under the provisions of the fifth and sixth sections of this act.

10. The said Graziers Bank of Virginia shall be located and transact its business at the town of Jeffersonville.

11. The said Graziers Bank of Virginia may, by sales of new stock, increase its capital to two hundred thousand dollars.

12. The present board of directors for the said branch shall continue to act as a board of directors for the said Graziers Bank of Virginia until a new board shall be appointed under the general law.

13. Except so far as the same may be inconsistent with the provisions of this act, the general banking law of the state shall apply to the said Graziers Bank of Virginia: and the general law of joint stock companies shall apply to the said Graziers Bank of Virginia, so far as the same is applicable to it, and not inconsistent with the provisions of this act.

14. This act shall be in force from it passage, but may be repealed, altered or modified, at the pleasure of the General Assembly."

Mr. Holt:

We read into the record another act upon the same subject, of the General Assembly of Virginia, entitled "An Act amend-

ing and re-enacting the 5th and 6th sections of the act passed March 13, 1862, entitled an act to convert the Northwestern Bank of Virginia at Jeffersonville into a separate and independent Bank, passed March 11, 1863, and found in the Acts of the General Assembly of Virginia, passed at a called session, 1862, found at page 84 of the volume of Acts referred to, as follows:

Chap. 51.—An Act amending and re-enacting the 5th and 6th sections of the act passed March 13, 1862, entitled an Act to convert the Northwestern Bank of Virginia at Jeffersonville into a separate and independent Bank.

Passed March 11, 1863.

1. Be it enacted by the General Assembly, that the fifth and sixth sections of the act passed March thirteenth, eighteen hundred and sixty-two, entitled an act to convert the branch of the Northwestern Bank of Virginia at Jeffersonville into a separate and independent bank, be amended and re-enacted so as to read as follows:

"3. At any time within three months from the passage of this act, any loyal holder of stock in the Northwestern Bank of Virginia, whose stock in said bank was purchased through said branch, or whose dividends have usually heretofore been credited to him at said branch, may return and assign to the said Graziers Bank of Virginia such stock, and demand and receive in lieu thereof a certificate for a like number of shares of stock in said Graziers Bank of Virginia: provided, however, that if before the first day of July eighteen hundred and sixty-three, satisfactory reasons shall be shown to the board of directors of the Graziers Bank for the failure of any such stockholder to avail himself of the benefits of the foregoing provision, the said board shall certify such reasons, with their opinion on the same, to the governor.

"6. As soon as may be after the expiration of the said three months from the passage of this act, the governor of the state shall cause certificates of the stock held by the state in the

said Northwestern Bank of Virginia, for an amount equal to the balance of the capital stock of said branch, not exchanged under the previous section, to be in like manner returned and assigned to said Graziers Bank of Virginia, for a like number of shares of the stock thereof: provided, however, that on the certificate authorized in the preceding section being received by the governor, it shall be his duty to transfer to the stockholder to whom the same shall be given, out of the stock herein directed to be transferred to the state, a quantity thereof equal to the amount held by such stockholder in the Northwestern Bank, together with any dividends thereon which may have accrued to the state under the sixth section of said act.

2. This act shall be in force from its passage."

Mr. Holt:

In that connection we will have to show by some one that Jeffersonville, unless these gentlemen will admit it, was in the County of Tazewell which is now a part of the State of Virginia.

The Master: And always has been?

Mr. Holt: And always has been.

The Master: Is that conceded, that Jeffersonville is in the County of Tazewell which was then and is now in the State of Virginia?

Mr. Anderson: That is a fact of which the Court will take cognizance.

Mr. Harrison: I have no knowledge on that subject at all.

Mr. Holt: Of course if this Court will take judicial cognizance of it when we call its attention to the fact, that will be satisfactory.

The Master: I will try and do that. If the map shows it is now in Virginia, it will be so held by me when the time comes.

Mr. Holt: We read into the record an Act of the General Assembly of Virginia entitled An Act authorizing the receipt of the treasury notes of the Confederate States in payment of taxes and other public dues, and regulating when and how the same shall be received, passed March 2, 1864, found in the Acts of the General Assembly of the State of Virginia, passed at

called session, 1863, on page 8 thereof, and is as follows:

Acts of Assembly of Confederate Virginia 1863-4.
On page 8 of said volume will be found the following:

Chap. 3.—An Act authorizing the receipt of the treasury notes of the Confederate States in payment of taxes and other public dues, and regulating when and how the same shall be received.

Passed March 2, 1864.

1. Be it enacted by the General Assembly, that the non-interest bearing treasury notes of the Confederate States, issued after the first day of April eighteen hundred and sixty-four, shall be received in payment of taxes and other public dues, and the non-interest bearing notes of the Confederate States, issued prior to the first day of April eighteen hundred and sixty-four, except the notes of the denomination of one hundred dollars, shall in like manner be received in payment of taxes and other public dues, after the first day of April eighteen hundred and sixty-four, and until the tenth of December eighteen hundred and sixty-four, but only at the rate of sixty-six and two-thirds cents for one dollar of such notes. No sheriff or other collecting officer shall have credit for the notes issued prior to the first day of April eighteen hundred and sixty-four collected by him, unless he shall pay the same into the treasury on or before the twenty-fifth day of December eighteen hundred and sixty-four. Notes of a less denomination than five dollars, issued by said Confederate States, shall be received without abatement at any time.

2. It shall be lawful for sheriffs and other collecting officers of taxes and other public dues to receive, without abatement, until the first day of April eighteen hundred and sixty-four, the non-interest bearing treasury notes of the Confederate States, issued prior to the first day of April eighteen hundue prior to the first day of April eighteen hundred and sixty-four. But no sheriff or other collecting officer shall receive credit But no sheriff or other collecting officer shall receive credit,

unlesss he shall pay the same into the treasury on or before the twenty-fifth day of June eighteen hundred and sixty-four, nor until he shall make oath that the notes offered in payment by him were severally and actually received by him in payment of taxes and other public dues, at the times and rates specified in this act.

3. The non-interest bearing treasury notes of the Confederate States of the denomination of five dollars, issued prior to the first day of April eighteen hundred and sixty-four, may be received without abatement in payment of taxes and other public dues until the tenth day of June eighteen hundred and sixty-four; provided the same shall be paid into the treasury on or before the twenty-fifth day of June eighteen hundred and sixty-four.

4. The act passed September fourteenth, eighteen hundred and sixty-three, entitled an act amending and re-enacting the one hundred and ninth section of an act entitled an act imposing taxes for the support of government, passed March twenty-eighth, eighteen hundred and sixty-three, is hereby repealed.

5. It shall be the duty of the keeper of the rolls to cause this act to be published immediately after its passage, in at least five newspapers published in Richmond, for a period of four weeks.

6. This act shall be in force from its passage.

Mr. Holt:

For the purpose of showing that the stocks in these banks that appear in the supplemental answer of the defendant, owned by the State of Virginia, really became a part of the Sinking Fund of that State, we read into the record an Act of the General Assembly of Virginia entitled "An Act to amend and re-enact the 4th section of an act entitled an act to separate the state from the banks, by a sale of its stock therein, and the application of the proceeds to the redemption of the public debt passed March 18, 1856, was passed April 3, 1858, and found at page 9 of the acts of the General Assembly of Virginia, 1857 and 1858," as follows:

"Chap. II.—An Act to amend and re-enact the 4th section of an act entitled an act to separate the state from the banks, by a sale of its stocks therein, and the application of the proceeds to the redemption of the public debt, passed March 18, 1856.

Passed April, 1858.

1. Be it enacted by the General Assembly, that the fourth section of an act entitled an act to separate the state from the banks, by a sale of its stocks therein, and the application of the proceeds to the redemption of the public debt, passed March eighteenth, eighteen hundred and fifty-six be amended and re-enacted so as to read as follows:

"4. The proceeds of the sales of the bank stocks hereby directed to be sold, shall be paid into the Sinking Fund, to be applied to the payment and redemption of such part of the state debt as may be redeemable; and if no part thereof be redeemable, then to purchasing and canceling such outstanding bonds or certificates of the debt of this commonwealth as were issued prior to the first day of January eighteen hundred and fifty-two. In purchasing such bonds or certificates of debt those which are redeemable at an early date shall be bought in preference to those which are redeemable at a later date: provided they can be bought at the same price."

2. This act shall be in force from its passage.

The Master: These are all public acts I understand, referable to by counsel on either side, whether they are put in or whether they are not put in.

Mr. Hogg: That is true.

Mr. Robinson: And already a part of the record.

We now read into the record report of the Virginia Debt Commissioners of 1871, addressed to his Excellency J. J. Jacob Governor of West Virginia, and signed J. J. Jackson, J. M. Bennett and A. W. Campbell together with the schedules accompanying same.

REPORT
of the
VIRGINIA DEBT COMMISSIONERS OF 1871.

To His Excellency,
J. J. Jacob,
Governor of West Virginia:

Sir: Under the joint resolutions passed by the West Virginia Legislature on the 15th and 24th days of February, last, the undersigned were appointed Commissioners by you "to treat with the authorities of Virginia on the subject of a proposed adjustment of the public debt of that State prior to the first day of January, 1861," and were directed by the Legislature "to make report thereof to the Governor," which we have the honor to do as follows:

On the 9th day of August last the Commissioners met in Parkersburg to confer together upon the subject matter of their appointment and to organize a programme of procedure in respect thereof. They addressed a letter to your Excellency notifying you of their meeting and organization and also the following letter to Governor Walker, of Virginia:

Parkersburg, W. Va.,
August 9, 1871.

To His Excellency, the Governor of Virginia:

Sir: The undersigned have the honor to inform you that under the joint resolutions passed by the Legislature of West Virginia on the 15th and 24th days of February last, they have been appointed Commissioners by the Governor of West Virginia to treat with Virginia in regard to the debt as it stood on the first day of January, 1861.

Also that they met in this city today for the purpose of entering upon the discharge of their duties, and to this end have designated General John J. Jackson as their chairman, through whom they propose to receive such communications as your Excellency may be pleased to submit.

Will your Excellency be pleased to indicate at your earliest convenience what action, if any, has been or is likely to be

taken by Virginia in the matter of appointing commissioners, or, in the event of no such appointments, what channel of communication will be open to us.

We have the honor to be,

Your Excellency's most Obedient servants,

JOHN J. JACKSON.
J. M. BENNETT,
A. W. CAMPBELL.

After forwarding this letter, together with the one to your Excellency, the Commissioners adjourned to meet in Richmond on a day to be agreed upon later in the season, there to confer with the authorities of Virginia, and to make such examination of public documents as might enable them to carry out the objects of their appointment.

Meanwhile they received from the Governor of Virginia, in answer to their letter of August 9th, a letter dated September 7th, the same purporting to be a copy of a letter addressed to your Excellency, and which is as follows:

Executive Chambers,
Richmond, Sept., 7, 1871.

His Excellency,
J. J. Jacob,
Governor of West Virginia:

Sir: I have the honor to acknowledge the receipt of your communication of the 17th ulto., notifying me of the appointment of Messers. Bennett, Jackson and Campbell as Commissioners on behalf of the State of West Virginia to treat with the authorities of this State upon the subject of the State debt. I have also received a certified copy of the joint resolution empowering you to make these appointments. Absence from the capital has prevented an earlier response to these several communications.

On the 18th of February, 1870, an act was passed by the Legislature of this State, and approved by me, authorizing the Governor to appoint three Commissioners on behalf of this State to treat with the authorities of West Virginia upon the

subject of a proper adjustment of the public debt of the State of Virginia, due or incurred previous to the dismemberment of the State, and a fair division of the public property.

Commissioners were promptly appointed under this act, and notice of their appointment, together with an authenticated copy of the act, were at once forwarded to the Governor of West Virginia. No response whatever to my communication was made by the Governor of West Virginia, but I learned through other sources that the matter was promptly submitted to the Legislature then in session, by which, either by act or resolution, the Governor was authorized to appoint Commissioners to meet and confer with those appointed from Virginia. I have never been informed, however, of the appointment of any Commissioners under the authority thus conferred.

A history of these proceedings, together with a statement of my own views upon the subject, was submitted to our Legislature in my annual message of December last, a copy of which I herewith enclose. The Legislature, acting upon the suggestion of the message, on the 11th day of February last, by a joint resolution, authorized the Governor to tender to the State of West Virginia "an arbitration of all matters touching a full and fair apportionment between said States of the said public debt," an authenticated copy of which joint resolution, together with the tender of an arbitration as therein authorized, was promptly forwarded to the Governor of West Virginia.

This joint resolution, while it does not in terms repeal the act of February 18, 1870, was intended to supersede it, and therefore I do not feel authorized to appoint Commissioners. Our tender of an arbitration has not been withdrawn, and I regret exceedingly that the authorities of West Virginia declined to accept it. I cannot understand what reasonable objection can be raised to this fair and equitable mode of adjustment so frequently resorted to by individuals and nations, and I trust that West Virginia will reconsider her action and accept the more speedy and satisfactory mode of settlement proposed by Virginia, to the end that prompt justice may be

done to the creditors of the Old State, and that harmony and good feeling may prevail between the people of the two States.

Very respectfully,

Your Excellency's Ob't servant,

G. C. WALKER.

Governor of Va.

(P. S.—Accompany the above.) "The foregoing is a copy of the original letter mailed to Governor Jacob."

From this letter we at once understood that so far as a conference with Commissioners or other persons authorized to represent Virginia in that capacity was concerned, our mission was at an end. But the joint resolution under which we were acting, copies of which you had forwarded for our guidance, directed that we should "ascertain and report the amount of the debt of Virginia on the first day of January, 1861, and what said debt was incurred for, and what amount of this State debt was then held by the Commissioners of the Sinking Fund, and by the Board of the Library Fund." Also that we should "ascertain and report the amount of all investments then held by the State, their respective amounts and character, and what thereof were then productive, and the dividends therefrom, and whether any of such investments then held by said State have since been donated, changed, converted or disposed of by the authorities of said State, and, if so, the amount and how disposed of." Also that we should "ascertain and report the revenue derived from the fiscal year ending on the 30th of September, 1860, from all sources by the State of Virginia within the present territory of Virginia and the amount derived from all sources from the territory now comprising the State of West Virginia;" and also that we "report any other relevant matter deemed proper" by us.

In addition to the foregoing duties thus devolved upon us by the terms of the joint resolution passed on the 15th day of February, we "were further empowered," in the language of the additional joint resolution passed on the 24th of the same month, "to proceed as soon as practicable to adjust, award and

determine upon fair, just and equitable principles what proportion of said public debt of Virginia should in their opinion be paid by West Virginia, and what part thereof should be paid by Virginia, subject, however, to the approval and ratification of the Legislature of West Virginia and the General Assembly of Virginia."

Under this authority and direction, thus minutely specified to us, we felt called upon to take substantially the same steps after the receipt of Governor Walker's letter of September 7th as we would have taken had we expected to meet Commissioners representing Virginia, viz; to go to Richmond and endeavor to gather the information expected and required under the terms of our appointment.

Accordingly we met in that city on the 9th of November last and after spending several days in the examination of such public documents as were available to us at the Capitol, and realizing the necessity for further and more explicit and official information than we could gather of ourselves unassisted from said documents, we addressed the following note to the Second Auditor of Virginia :

Richmond, November 14, 1871.

To the Second Auditor of Virginia:

Sir: I am directed by the Commissioners representing West Virginia in the matter of the public debt of Virginia prior to the first of January, 1861, to procure from your office points, viz:

1. The actual amount of the public debt of Virginia on the first of January, 1861. And under this head the amounts of said debt owned by the Sinking Fund, the amount owned by the Literary Fund, and the amount owned by the Library Fund.

2. What portion of the bonded debt was invested, and how invested on the first of January, 1861. Also what portion of the investment was productive, what were the dividends or profits arising therefrom for the year 1860, and whether any such investments have since been donated, changed, converted or otherwise disposed of.

3. What portion of the appropriations expended in West Virginia for public improvements came from the sales of State bonds and what portion from the revenues or taxes of Virginia.

4. A copy of the advertisement for the redemption of a portion of the public debt on the first day of January, 1861.

5. A statement of the amount of public debt actually redeemed on the first of January, 1861, pursuant to said advertisement.

Upon these points the Commissioners desire to hear from you at your earliest convenience.

Very respectfully, your obedient servant,

A. W. CAMPBELL,
Secretary.

In reply to the foregoing communication we received the following note at 5 o'clock on the evening of the 16th of November, after a lapse of two and a half days, and after we had abandoned all hope of assistance asked for in our letter, and after, in fact, we were on the eve of our departure for home:

Second Auditor's Office,
Richmond, Nov., 16, 1871.

A. W. Campbell, Esq., Secretary, &c.:

Dear Sir: Yours of the 14th was received. You ask me for a report upon a variety of questions connected with our public debt, the transactions of the Board of Public Works in regard to it, and the financial affairs of the State, which it is understood, of course, you propose to us in the contemplated adjustment of the portion to be paid by West Virginia of the debt.

To answer the questions propounded would involve an amount of labor which we could not bestow on the subject.

But, apart from this, I presume at an early day this office will be called upon by the Executive or the General Assembly of Virginia for detailed reports of all the matters referred to, which will be available to you.

The books and records of this office are open to your inspection.

I trust that in failing to respond to your inquiries you will not regard me as in any wise wanting in official courtesy to you or your associates. None, certainly, is intended.

I have the honor to be,

Most respectfully yours,

ASA ROGERS.

With the reception of this note the Commissioners closed their labors in Richmond, finding that a further stay was not likely to add to the scant information already gleaned by them from the public documents.

It is proper to say in connection with the Second Auditor's communication that we, in delivering our own communication to him, caused it to be verbally understood that we were ready and willing to pay for the services of an expert, competent to to obtain for us the information requested, and that we did not desire or intend to trench upon the services of any one with whose duties the labor required might seriously conflict.

After this termination of their visit to Richmond, the Commissioners agreed to meet again on the 12th of December following, at Parkersburg, there to prepare and transmit to your Excellency such information as they had been able to obtain, and such as they might still further obtain, and along with it such an expression of opinion as is called for in the joint resolution of February 24th.

Accordingly we met in Parkersburg at the date named, and after nearly two weeks of examination and comparison of all the sources of information accessible to us, agreed upon and drew up the facts and statements hereinafter presented.

Previous to this meeting we had just recieved copies of the Richmond papers of December 7th, containing Governor Walker's message to the General Assembly of Virginia at its meeting on the 6th, in which we observed that among other allusions to the debt question pending between the two States, and after reference to our correspondence with him of August last and his answer thereto, as already quoted, he proceeds to arraign the good faith of the authorities of this State as follows:

"Now if the authorities of West Virginia entertained an earnest desire to make a speedy and final settlement of this

matter, why did they not accept our tender of arbitration? A mode of settlement of such controversies universally recognized by both nations and individuals as right and appropriate. Suppose an equal number of Commissioners appointed by each State, and that they should meet and disagree upon any or all points involved, who is to decide between them? And yet, beyond a doubt, they would radically disagree upon the first or chief point to be settled, viz: the basis or principle upon which the settlement should be made. But suppose that the Commissioners should finally agree, does any one suppose that their finding would be ratified by the legislatures of the two States disagreeing as the people do radically upon the merits of the question at issue? Of course not."

This quotation from Governor Walker's message fairly exhibits the spirit in which he has seemed to view not only our own efforts to carry out the objects of our appointment but likewise the sincerity and good faith of the Legislature of West Virginia in providing for the appointment of such a commission by your Excellency.

And yet while this is the case it is not to be forgotten that Virginia herself initiated this method of attempting to adjust the debt question. And the language of the Governor would seem to be all the more gratuitous in such a connection from the fact that in his annual message of December 7, 1870, he considered it worth while to allude to the political change that had taken place in this State at the preceding October election, and bespoke in so many words for the "new administration" an "opportunity of manifesting its intentions and its appreciation of honesty and fair dealing." And yet notwithstanding this language by himself thus voluntarily employed on our behalf, and notwithstanding also the fact that one of the early acts of the "new administration" was to respond to the policy that Virginia herself had initiated, and before it was known in this State that she had changed that policy, and while the appointees under the response were in Richmond seeking in vain from the proper authority of Virginia for such information as every debtor is entitled in law to receive from his creditor, saying nothing of that spirit of "fair dealing" that was

so conspicuously spoken in our behalf, Governor Walker proceeds in his late message to asperse the good faith of the State of West Virginia after the manner and in the words that we have quoted.

The authorities of West Virginia have never assumed to themselves any right of precedence in the matter of a policy for adjusting the difficulties surrounding the debt question. But in the joint resolution passed on the 24th of February last they did assume the modest right of adhering to the policy already inaugurated by the State of Virginia, and by her so freely tendered heretofore for their acceptance, and therefore they respectfully declined to adopt a new and different proposition from her until they could test the merits of the one already adopted.

Apparently the present Executive of Virginia from an enforced familiarity with the workings of "personal government" which he so much deplores, has acquired ideas as to the right of the initiative between equal contracting parties that are scarcely consistent with the delicacy of the issue pending between this State and his own. For instance, in his letter of September the 7th, he tells us that the legislature of Virginia, upon his suggestion, has tendered an arbitration to this State, and he trusts "that West Virginia will reconsider her action and accept the more speedy and satisfactory mode of settle ment proposed by Virginia." And again in his late message, he says that "the better course to be pursued is for the two States to submit the whole question to arbitration," and West Virginia is arraigned as heretofore shown, for not concurring in his opinions. Apparently it did not occur to the Governor that since Virginia had proposed both modes of settlement to this State, the latter might make her choice between them without subjecting her motives to imputation. And yet all that she had assumed to do is simply to choose between the policies initiated by Virginia. Unless, therefore, it can be shown that it is the prerogative of that State to prescribe the terms upon which the debt shall be adjusted the question should hereafter be discussed in a spirit better calculated to allay all sectional irritation.

But we pass from this incidental reference to Governor Walker's strictures upon the attitude of this State towards the debt question to the action of the Virginia legislature upon the same question as embodied in the act approved on the 30th of March last, and known as the Funding Bill. This act is in keeping with the initiatory legislation in regard to the debt to which we have just referred. It assumes to apportion the debt of that State arbitrarily, notwithstanding her authorities had six weeks before the passage of the act received notice of the joint resolution of the West Virginia Legislature providing for the appointment of Commissioners. It assumes, also, to apportion the debt, not as it stood on the first day of January, 1861, but as it would stand on the first day of July, 1871, after the interest had been twice compounded, once in 1866, and again at the date last named; and to apportion it, too, upon the basis of territory and population, and without any reference to the equities that should always govern an assignment of debt between sections that were so notorious in our own case. In other words it assumes to apportion to West Virginia one-third of the debt as it now stands, simply on the ground that she has one-third of the territory and population formerly belonging to Virginia, and without reference at all to the question of resources and values. This is apparently the practical result which Governor Walker hoped to reach when he urged upon us the "more speedy and satisfactory mode of settlement proposed by Virginia," inasmuch as he tells us in his late message that this is the "plan for a reorganization of the State debt," which he "had recommended twelve months before."

But without reference to the authorship of this or any other "plan" for adjusting the debt question, we propose to consider as briefly as possible the real cause now pending between Virginia and West Virginia as we understand it.

The tables or statements which we annex as part of our report show, among other things, the following facts:

That the funded debt of Virginia on the first day of January, 1861, was $31,778, 867.32, after all reductions.

That all or nearly all, of this debt was incurred for and actually expended in works of public improvement, such as canals, railroads, turnpikes, plank roads and bridges.

That this vast sum, upwards of $30,000,00 was expended for improvements in the present State of Virginia, and only about two and a half millions in the present State of West Virginia.

That the present State of Virginia contains 41,352 square miles and West Virginia only 20,000 square miles, or less than one-third.

That the counties composing what is now Virginia contained by the census of 1860 a population of 1,220,829, and those composing West Virginia only a population of 374,985, or less than one-fourth.

To these exhibits we append others, under our instructions from the legislature, but they are such as do not enter into our argument here, which is to show that no just apportionment of the debt can be made upon the basis of population and territory alone, which is the basis upon which the Virginia Funding Bill is confessedly predicated.

This theory of apportionment is apparently quite current among the people of that State, and is defended with ability by Judge Meredith, of Richmond, in a carefully prepared paper on the subject. His position is that West Virginia should pay one-third of the debt because, as he says, it is a principle of international law governing the division of nations that "the obligations which had accrued to the whole before the division are, unless they are the subject of special agreement, ratably binding upon the different parts." This he gives as a quotation from Phillimore. Two inquiries present themselves in connection with it, First, was Virginia a nation in the sense intended by Phillimore? and, second, what are we to understand by a ratable part of a debt? We presume that it will not be contended that the general rights and obligations of a nation, as defined by international law, belonged to Virginia prior to the division of the State, and therefore we cannot admit the applicability of the quotation in that particular. Neither can we admit Judge Meredith's construction of the word ratable. He applies it exclusively to territory and population and excludes everything in the shape of resources and value, such as public works, buildings and in-

stitutions, which, as we all know, vitally affected the equity of a division of territory.

Judge Meredith next adduces the following quotation from Chancellor Kent to sustain his position:

"If a State should be divided in respect to territory, its rights and obligations are not impaired, and if they have not been apportioned by special agreement those rights are to be enjoyed and those obligations fulfilled by all the parts in common."

This quotation is much more intelligible and just, and we think will tend to sustain the conclusions we have reached, as hereinafter stated.

In addition to the two quotations already given, Judge Meredith cites other authorities to sustain his position that West Virginia is chargeable with one-third of the debts, but we do not regard them as applicable to the case under consideration. First, because Virginia is not a nation. Second, because in all the cases referred to in the authorities quoted, treaty stipulations had more or less to do with the question. Third, because the debts were war debts, the benefits of which, if any, accrued to each individual, and the obligations of which therefore rested upon each. In no instance was the debt created for internal improvements which necessarily confer partial and local benefits that in most cases exceed the general benefit to the State at large. We, therefore, fail to see the proper analogy that should exist to make these citations precedents for the case of Virginia and West Virginia.

Judge Meredith winds up these references to various authorities, by two general deductions of his own, as follows:

1. "That the public debt of a State is not affected by a change in the form of its government, nor by the partition of its territory into two States, but remains in full force and must be discharged."

2. "That if a State be divided into two or more States, the debts which had been contracted by the whole before the division are, unless they have been the subject of a special agreement, ratably binding upon the different parts in proportion to territory and population."

The first deduction it is not necessary to consider, as West Virginia, in her ordinance of separation from Virginia, as also in her constitution, agreed to pay an equitable proportion of the public debt. What that equitable proportion is we are now considering.

In reference to the second deduction we have to remark that Judge Meredith draws a conclusion from his authorities which they do not sustain. Phillimore, for instance, says that "if a nation be divided into various distinct societies, the obligations which had accrued to the whole before the division are ratably binding upon the different parts." Here Phillimore and the authorities stop. But this does not suffice for the Virginia side of the question, and Judge Meredith adds after the word "parts" the words "in proportion to territory and population." These words are not found in any of the authorities, so far as we are advised and certainly not in any of the quotations adduced by the Judge.

A moments consideratin will show that a division of debt according to population and territory would not only be impracticable but would conflict with common sense. It would be impracticable because it does not determine the relative value of each one of the two elements of population and territory. Suppose the population to be twice as much as the territory, or suppose the territory to be three times as great as the population, which element has the greater value in determining the result?

Without pursuing this thought further it is manifest that nothing is settled by such a rule. You must fix the relative value of the two elements before you can reach a conclusion It is, therefore, plain why the books do not give the rule as stated by Judge Meredith, because of its indefiniteness, but mainly because of its injustice. Would any sane man lay down a rule for the division of a State which would ignore the great cities, public improvements, public works, institutions of all kinds, great commercial advantages, such as rivers and harbors and the great advantage of fertility of soil; all of which and many other elements of wealth, property and power, might

be found in one division and be wholly absent in the other. Hence we say that such a rule is repugnant to common sense.

A public debt is mainly a charge upon the wealth and resources of a people. It is represented by taxes, and taxes are imposed not on numbers or square miles but on resources and values. How much stronger is the case when the very debt under consideration was created in developing and enriching one portion of the State almost exclusively. May, more, when that division of the State is in possession of and enjoying, giving away and selling at auction and otherwise disposing of the very subjects for which the debt was created.

These considerations afford abundant reason why no authority would say, in the absence of a compact (unless there was perfect homogeneity) that it would be just to divide a "nation" any more than an individual estate by population and territory. We doubt not that Judge Meredith himself would scout the idea of dividing an estate on such a basis and without reference to the quality of the land and the improvements made. Why then would he ignore such considerations in apportioning a public debt between two divisions of a State? Chancellor Kent, whom he has quoted, does not sustain him in so doing. The quotation already given from that author says that "if a State should be divided in respect to territory its rights and obligations are not impaired; and if they have not been apportioned by agreement, those rights are to be enjoyed and those obligations fulfilled by all the parts in common." Not a word in this quotation about a division ratably according to population and territory. According to this authority the State of Virginia was only a tenant in common with West Virginia in all the public works, improvements and property of the original undivided State, and had no authority to alienate, sell, give away, or dispose of any of the public works, and being in possession and holding them for her own exclusive use and benefit, by ousting West Virginia, she would be bound to account to the latter for her share. This would seem to be the legitimate conclusion from the authorities relied on by Judge Meredith, even admitting their applicability to the case under

consideration, which we do not concede by any means; and, therefore, with this reference we pass them by.

We think we take a more practicable view of the subject, and one which will attain all the ends of justice. The table accompanying this report shows that the bonded debt of Virginia on the first day of January, 1861, represented money borrowed and expended in improving the State by canals, railroads, turnpikes, plank roads and bridges. All these expenditures conferred a local and special benefit, were expended, not only by the outlay of the money in creating a market and stimulating enterprise and trade, but in otherwise developing the resources of particular localities to an extent quite equal to the general benefit of the State at large. And this local and general development is the sum of the value of the improvements to the section where located, and gives them an inestimable and abiding value to that section. This value is progressive and not susceptible of being fixed. So certainly is this the case that it is probable, if it were practicable to utterly extinguish these improvements, and thereby extinguish the debt, that the State where they are located would not listen to such a proposition.

It may be assumed then that the public works for which the debt was created are worth what they cost. Virginia, by selling, donating, and disposing of these works as her own property, without regard to the rule laid down by Chancellor Kent, and without consulting West Virginia, must be taken to have accepted them on that basis, and is therefore chargeable with them on that basis.

When the tables are consulted they will show an expenditure of over thirty millions in Virginia and about two and a half millions in West Virginia. Much of this latter was expended at comparatively recent dates, whereas the expenditures in Virginia range through a period of fifty years, with benefits accruing more or less throughout that period. In the light of such facts, we submit that no intelligent mind, wishing only to do justice, can doubt for a moment that the benefits conferred, and not the territory and population, should be the principal, if not the only basis of an adjustment of the

debt. The Governor of Virginia, in his message of 1870, and again in 1871, and the Legislature of that State, by its funding bill, seem, however, to have entirely overlooked the foregoing considerations, and to have jumped to the conclusion that West Virginia should pay one-third of the debt.

We see the case differently. On the one hand, for instance, we see rich cities, commercial marts of all kinds, navigable rivers, fine harbors, a highly improved productive territory, wealthy capitalists and a well to do people, public institutions, such as a State Capitol and extensive public grounds, an Executive Mansion, a Penitentiary, Armory, University, two Lunatic Asylums, a Military Institute, a Blind Asylum, a valuable miscellaneous and law library, a large literary fund and the United States deposit of surplus revenue, all these resources in addition to the vast millions invested in canals and railroads and other avenues of inland commerce.

On the other hand we see set in the balance against these rich resources the territory of West Virginia, less than one-third of the old State, much of it broken into barren mountains and hills, no navigable streams penetrating it in every direction, no railroad but the Baltimore & Ohio, no public works or institutions, her lands mostly covered with unbroken forests and rewarding industry but grudgingly, no outlets in the interior for the little surplus existing, the people poor and subsisting by rough work in the woods and fields, possessed of no capital wherewith either to develop their localities or ameliorate their own condition in life in fact, their only wealth being for the most part their poor soil, their untiring perseverance and their indomitable love of liberty.

And yet, notwithstanding this great discrepancy between the conditions and resources of the two States, Virginia assigns one-third of her funded and compounded debt to West Virginia to pay, simply because the latter has one-third of the territory and one-fourth of the population formerly belonging to the whole State. And, this, too, notwithstanding her papers have often proclaimed that West Virginia was a foster child of the old State, and as such dependent upon her bounty. This opinion we shall not stop to discuss, and we only refer to it as showing the inconsistency

between the theory and practice of our Virginia friends. Supposing it to be correct, the explanation as to how it came about can never be made creditable to those who lavished all their favors on one section of the State, and withheld them from the other, and the vindication of the step taken by West Virginia during the war in separating from the old State consists largely of this traditional discrimination against her. And in this connection it may not be out of place to notice that the increase of populaion in West Virginia during the decade from 1860 to 1870 was of a character to still further vindicate the step taken, it being about thirty per cent. This large increase illustrates her onward march since her separation from her former foster parent, and tends to suggest how far in advance of her present position she really might have been had she received in the past anything more than "the crumbs that fell from the rich man's table."

We come now to the conclusion of our report. Having given our reasons why we dissent entirely from the position of Virginia in reference to the debt, we proceed to state our own conclusions in regard to it as follows:

Statement A, as annexed to our report shows that the bonded debt of Virginia, on the first of January, 1861, after all deductions, was $31,779,067.32.

The statement also shows that all of said debt was expended within the present State of Virginia, with the exception of $2,784,329.29.

Statement E, shows that $328,706.22 was collected from counties in West Virginia after January 1, 1861.

Statement F, shows that the amount of expenditures for all purposes in West Virginia was $3,343,929.29.

We are not able to say certainly what part of this expenditure was from the proceeds of State bonds, (and, therefore, a part of the State debt) and what part was appropriated from the regular receipts of the treasury. We have had access to no data that could determine the question. Our letter to the Second Auditor at Richmond sought information on this point in vain. But we have given Virginia the benefit of it all as a credit on her side of the account, although the resolutions

under which we are acting contemplate nothing on the part of West Virginia but an assumption of her proportion of the bonded debt, inasmuch as both sections and particularly Virginia, received appropriations out of the ordinary receipts of the treasury.

We have charged West Virginia with all that we have found expended within her limits, viz: The amount of the funded debt created for improvements within her territory, the amount invested in her banks, the amount expended on the Lunatic Asylum at Weston, and the estimated value of the property known as the Lewisburg Law Library.

On the other hand we have credited her with her share of the estimated value of the public property and assets of Virginia, other than the property represented in the bonded indebtedness. This latter equalizes itself, and therefore does not enter into the account. Virginia has the property and owes the debt which it represents. We refer only to the public buildings, institutions, and other assets as given in statement G. As to West Virginia's share in these we can only venture an approximate estimate. The public buildings, the common property of the two States, paid for out of the general revenue, we have estimated at $3,875,000 as per statement G. and it would be reasonable we think to estimate West Virginia's interest in them at one-fourth on the basis of population.

The same statement shows that the surplus revenue of the United States deposited with the State under the act of Congress, June 23, 1836, gave Virginia $2,937,237.34, of which sum she appears to have received at least $1,932,809.33. This act assigned to each State its share of deposits on the basis of its representation in Congress, and Virginia having, in 1860, thirteen representatives, three of whom were from West Virginia, it would seem that three-thirteenths of that fund belonged to the latter.

To this share of the deposits, and her interest in the public property, we add, as per statement, her proportion of the Literary Fund. This fund at the date quoted in statement G, amounted to $1,509,583.16. As it was apportioned throughout the State on the basis of the white population, we follow that

rule in assigning to West Virginia three-sevenths of it, that being her ratio of white population in 1860.

Upon the data thus ascertained and explained, we summarize the account between the two States as follows:

WEST VIRGINIA TO THE STATE OF VIRGINIA.

Dr. For the amounts expended and invested in her territory as set forth in statement F..		$ 3,343,929 29
Cr. By one-fourth of the estimated value of the public buildings and other assets, as given in statement G.....$	968,750 00	
Cr. By three-thirteenths of the United States surplus fund as per same statement.....	446,032 92	
Cr. By three-sevenths of the Literary fund as per same...	647,079 92	
Cr. By the amount collected in West Virginia after January 1, 1861, as per statement E..	328,706 22	2,390,569 06
Balance due Virginia.....		$ 953,360 23

This is the balance as we find it after a protracted examination of such sources of information as were available to us. And the ascertainment of it naturally brings our labors to a conclusion. We commend our investigations to Your Excellency's favorable consideration. From the beginning we realized that the results arrived at must necessarily be only proximate in their character, inasmuch as our sources of information were limited. Subsequent inquiry, under more favorable circumstances, may change the general result a few thousands for or against either State, but such a contingency is of course unimportant. The principle upon which the debt should be adjusted is the important point to settle. And it is to this point

as set forth in these pages, that we beg leave, through your Excellency, to call the attention of the Legislature.

Very respectfully,
Your Excellency's most obedient servants,

J. J. JACKSON
J. M. BENNETT
A. W. CAMPBELL

STATEMENT A.

Showing the Amount of the Public Debt of Virginia on the first day of January, 1861, and the amounts thereof held by that State. Also the amount thereof incurred for Public Improvements in West Virginia.

The debt of Virginia on the first day of January, 1861, as per the Auditor's report to the extra session of the Legislature on the 10th of December preceding, was as follows:		
Debt of January 1, 1852.....	$10,508,815 30	
Debt created since that time...	23,379,946 33	
Total		$33,888,791 63
Less the amount redeemed on 31st December, 1860.....$	237,731 31	
Less amount in the Sinking Fund	1,462,993 00	
Less amount in the Literary Fund.....	248,000 00	
Less amount in the Library Fund.....	16,000 00	
Less Bonds lost on Steamship Arctic.....	145,000 00	$ 2,109,724 31
Net amount of the debt January 1, 1861..		$31,779,067 32

This debt as will be seen by Statement B, was mainly incurred for works of public improvement.		
*Statement F, shows that only $2,784,329.29 of it was incurred for improvements in West Virginia.		
Said improvements are as follows:		
Joint Stock Turnpike.....	$ 906,196 32	
Roads on State Account.....	1,145,619 07	
Bridge Companies	76,612 50	
Navigation Companies	207,840 00	
Railroads.....	500,000 00	
Lunatic Asylum at Weston..	125,000 00	$ 2,961,267 89
Deduct Virginia's pro rata for improvements lying in both States.....		176,938 60
		$ 2,784,329 29

*The statement shows as total expenditure in West Virginia of $3,343,929.29, but only the above amount for public improvement.

STATEMENT B.

Showing the amount and character of the investments held by the State of Virginia on the first of January, 1861, *together with those that have since been donated or otherwise changed, as per Governor Walker's message to the Virginia Legislature of March* 8, 1870.

Alexandria, Loudoun and Hampshire Railroad .....$	50,862 00
Blue Ridge Railroad	1,744,723 00

Chesapeake & Ohio Railroad..	2,484,134 00	
Norfolk & Petersburg Railroad	1,341,341 00	
Orange and Alexandria Railroad.....	1,151,207 00	
Richmond and Danville Railroad	1,847,585 00	
Richmond and Petersburg Railroad	385,600 00	
Richmond & York River Railroad	490,999 00	
South Side Railroad	1,883,500 00	
Virginia & Kentucky Railroad	103,348 00	
Virginia and Tennessee Railroad	3,755,000 00	
Marietta and Cincinnati Railroad	202,611 00	
James River and Kanawha Canal	10,400,000 00	
Other Navigation Companies..	1,192,616 00	
Plank roads, Turnpikes and Bridges	4,761,564 00	
Chesapeake and Ohio Canal...	900,000 00	
Selden, Withers & Co.....	436,000 00	
Total	————	$33,131,090 00
To this amount add, as per Governor Walker's message of March 8, 1870, for amounts "lost, abandoned, or surrendered and released," the following sums, viz:		
Subscription paid to Covington & Ohio Railroad Co.....$	3,206,461 83	
Subscription paid to Fredericksburg & Gordonsville Railroad Company	163,299 00	
Subscription paid to City Point Railroad Company	110,000 00	

Subscription paid to Blue Ridge Railroad Company	1,100,000 00	
Subscription paid to Manassas Gap Railroad Company.....	2,280,000 00	
Subscription paid to Portsmouth & Roanoke Railroad Company	406,650 00	
Subscription paid to Roanoke Valley Railroad Company...	307,402 00	
Subscription paid to Winchester & Potomac Railroad Company	270,000 00	
Subscription paid to Alexandria, Hampshire and Loudoun Railroad Company ...	1,017,248 00	
Subscription paid to Navigation and other companies....	298,032 05	
Loss by Selden, Withers & Co., and Chesapeake & Ohio Canal Company	580,000 00	
*Total		9,739,092 88
Grand Total.....		$42,870,182 88

We add these amounts simply because we find them given by the Governor as addenda to the $33,131,090.00, and not because we find them in any official record to which we have had access.

STATEMENT C.

Showing the amount of revenue contributed by the counties composing the State of West Virginia to the Treasury of Virginia for the fiscal year ending September 30, 1860, together with the amount in the aggregate contributed by the present State of Virginia.

COUNTIES.

Barbour .....$	11,402 86
Berkeley	31,819 72

Boone	4,481 95
Braxton	6,968 90
Brooke	9,112 34
Cabell	14,353 52
Calhoun	2,105 50
Clay	1,820 82
Doddridge	5,765 72
Fayette	6,642 01
Gilmer	4,875 78
Greenbrier	30,863 02
Hancock	6,068 57
Harrison	27,117 22
Hampshire	26,856 45
Hardy	19,986 40
Jackson	11,357 91
Jefferson	47,263 59
Kanawha	26,922 46
Lewis	12,004 97
Logan	4,444 96
Marion	19,985 80
Marshall	15,657 33
Mason	20,257 22
Mercer	5,936 80
Monroe	25,343 32
Monongalia	22,116 00
Morgan	6,111 98
Nicholas	6,156 59
Ohio	48,710 29
Pleasants	3,981 46
Preston	15,081 36
Pocahontas	8,380 89
Putnam	8,465 10
Pendleton	8,588 99
Randolph	8,537 30
Ritchie	8,778 51
Raleigh	3,979 31
Roane	4,930 46
Taylor	10,530 33

Tyler	7,213 93
Tucker	2,237 74
Upshur	9,661 71
Wayne	8,156 39
Webster	534 35
Wetzel	6,450 94
Wirt	3,913 52
Wood	22,114 67
Wyoming	2,304 99
Total	$ 626,351 97

Add for taxes on bank dividends	$ 10,214 99
Bank dividends themselves	10,513 00
	$ 647,079 96
Total revenue of Virginia for the fiscal year ending September 30, 1860	$ 4,182,510 27
Less the amount borrowed that year	245,636 71
Revenue proper	$ 3,936,873 56
Deducting amount paid by West Virginia	647,079 96
Leaves the amount paid by Virginia as	$ 3,289,793 60
By this Virginia would pay of the public debt	$26,547,582 22
West Virginia would pay of the same	5,231,485 10

*The taxation on dividends of branches of Virginia banks in West Virginia is not included, because not ascertained.

STATEMENT D.

Showing the population of West Virginia, by counties in 1860, *also the area in square miles as given by Boye's map of the counties existing at date of its publication. Also, the years in which said counties were formed.*

NOTE—*There is a discrepancy of several thousand square miles between Boye's map and Mitchell's. The former gives the area of Virginia at* 65,624 *and the latter at* 61,352.*

COUNTIES.	Population.	Sq. Miles.	Formation of County.
Barbour	8,959	308	1772
Berkeley	12,525	202	1796
Boone	4,840	1,033	1809
Braxton	4,992		
Brooke	5,494		
Cabell	8,020		
Calhoun	2,502		
Doddridge	5,203		
Fayette	5,997		
Gilmer	3,759		
Greenbrier	12,210	1,409	1778
Hampshire	13,913	989	1754
Hancock	4,445		
Hardy	9,864	1,156	1786
Harrison	13,790	1,095	1784
Jackson	8,306		
Jefferson	14,575	225	1801
Kanawha	16,150	2,090	1789
Lewis	8,029	1,754	1816
Logan	4,938	2,930	1824
Marion	12,721		
Marshall	13,001		
Mason	9,185	904	1804
McDowell	1,535		
Mercer	6,818		
Monongalia	13,048	721	1776
Monroe	10,759	614	1790
Morgan	2,731	271	1820
Nicholas	4,636	1,431	1813
Ohio	22,432	375	1776
Pendleton	6,165	999	1718
Pleasants	2,945		
Pocahontas	3,958	794	1821

Counties.	Population.	Sq. Miles.	Formation of County.
Preston	13,312	601	1818
Putnam	6,301		
Raleigh	3,367		
Randolph	4,990	2,061	1787
Ritchie	6,847		
Roane	5,382		
Taylor	7,463		
Tucker	1,428		
Tyler	6,517	855	1814
Upshur	7,292		
Wayne	6,747		
Webster	1,553		
Wetzel	6,703		
Wirt	3,751		
Wood	11,046	1,223	1799
Wyoming	2,861		
Totals	374,987	24,040	

Note.—On a debt of $31,779,967.32 divided equally between a population of 1,594,291 (which was the whole population of Virginia in 1860 would be nearly $19.03, 3.7-100 miles each, and would impose a debt on the above population of 374,087 amounting to $7,474,642.46.

*No complete survey of the State has ever been made, and in consequence of the irregular exterior lines no reliable estimate of the State's area appears to have been attained. By Herman Boye's map, made in 1825, the area is as above. By L. Von Buchoitz's map by authority of Virginia in 1860, the mean length of the State is given at 360 miles, and the mean breadth at 200 miles, giving a horizontal area of 61,352 miles, which is the same as given in Mitchell's map.

A Table showing the Approximate Number of Square Miles in Virginia and West Virginia.

By Boye's map, the number of square miles in Virginia prior to the division was 65,624, or 41,999,360 acres.

By the Auditor's report for 1861, the number of square miles in the State was reported at 81,549, or 52,191,360 acres.

There appears to be not only a wide discrepancy in these respective authorities, but likewise an error in reducing the square miles to acres. These errors are no doubt to be accounted for by the notorious fact that under the Virginia system of patenting lands the same lands are on the Commissioner's books several times.

By Mitchell's General Atlas for 1868, the area of Virginia is given at 41,352 square miles, and that of West Virginia at 20,000, which would give to West Virginia something less than one-third of the joint territory.

There being no map that gives the area of the counties of West Virginia separately, we have assumed that the statement given by Mitchell is approximately correct.

STATE MENT E.

Showing the Revenue Paid Into the Treasury of Virginia Since the First Day of January, 1861, *From Counties Now Included Within West Virginia.*

Amounts marked with a * were collected by judgments or executions in the year named, but for what particular year is uncertain.

Where it was plain that any collections were arrears for 1860, they have not been brought into this statement.

Counties—	1861	1862	1863	1864	1865	Total.
Barbour	$ 726 14	$	$	$	$	$ 726 14
Braxton	797 50			*1,000 00		1,797 50
Boone	381 02	*2 00				383 02
Cabell	739 08					739 08
Calhoun				*2,307 82		2,307 82
Fayette	391 35					391 35
Gilmer				*84 57		84 57
Greenbrier	26,945 81	44,084 83	79,227 26			150,257 90
Hardy	16,508 10					16,508 10
Jackson	800 00					800 00
Jefferson	32,269 06					32,269 06
Kanawha	1,590 76	*1,694 33	*2,738 00	*3,467 00		9,490 09
Lewis	946 10					946 10
Logan	472 52		*25 63	*1,410 08		1,908 23
Marshall	107 95					107 95
Mason	675 66					675 66

STATEMENT E—(*Continued*)

COUNTIES—	1861	1862	1863	1864	1865	Total.
Mercer			*1,111 91			1,111 91
McDowell			1,200 00			1,200 00
Monroe	22,415 34	33,470 48				55,885 82
Morgan	615 00					615 00
Nicholas			5,000 00			5,000 00
Pleasants	365 00					365 00
Pendleton	8,006 61	6,000 00	16,900 00			30,906 61
Pocahontas	7,714 00					7,714 00
Putnam	746					746 10
Raleigh			*600 00			600 00
Ritchie	21 12					21 12
Roane			*3,487 81			3,487 81
Upshur	660 75					660 75
Wayne	354 74					354 74
Webster	20 00					20 00
Wyoming					*624 97	624 97
						$328,706 22

*On the exclusion from this statement of taxes levied in 1860 and collected in 1861, the commissioners were not unanimous. For it was maintained that the taxes of 1860 were levied and collected chiefly to pay interest falling due January 1 and July 1, 1861. One-fourth of the taxes especially designed to pay the July interest was not payable into the treasury until about the 15th of February, 1861. The taxes were collected off of the people who had assumed the burden of the debt and ought to be applied to their relief.

STATEMENT F.

West Virginia's Indebtedness to the State of Virginia.

Showing (approximately) the amount of the public debt of Virginia that was incurred for works of improvement in the territory now included within the State of West Virginia, and such other sums as West Virginia is chargeable with.

These improvements consist of works in which Virginia was a joint stockholder with private companies and of works constructed wholly on her own account, and certain miscellaneous expenditures.

Date of the several acts authorizing these expenditures is given as far as ascertained.

These expenditures are classified as follows:

(1) Joint Stock Companies.
(2) Roads Constructed on State Account.
(3) Bridge Companies.
(4) Navigation Turnpike.
(5) Railroads.
(6) Miscellaneous.

STATEMENT F

Date of Act.			Class 1—Joint Stock Turnpikes.
			Back Creek Valley Turnpike .....
			Berkeley & Hampshire Turnpikes....
1849,	March	15	Buckhannon and Little Kanawha....
			Brandonville, Kingwood & Evansville.
1848,	February	9	Clarksburg and Buckhannon .....
1849,	March	13	Clarksburg and Philippi .....
1850,	February	10	Cranberry Summit & Brandonville..
1850,	February	2	Clarksburg and Wheeling .....
1838,	April	3	Cacapon and North Branch .....
1835,	January	22	Charleston and Point Pleasant .....
1860,	March	9	Charleston, Ripley and Ravenswood..
			Dunkard Creek .....
			Elk River .....
			Franklin and Circleville .....
1833,	March	30	Fish Creek Road ....
			Gnatty Creek and West Union .....

(*Continued*)

Amount of the Appropriations.	Amount Expended.	Amount Unexpended.	Miles Length.
$ 1,500 00	$ 1,140 00	$ 360 00	
21,600 00	16,750 00	4,850 00	
7,773 00	7,773 00		24
6,000 00	3,193 46	2,806 54	
32,000 00	28,514 49	3,485 51	27¾
6,000 00	5,446 25	553 75	22
4,815 00	4,120 11	694 89	18¼
10,200 00	4,195 35	6,004 65	18
12,000 00	12,000 00		45
31,260 00	31,260 00		56
30,000 00	27,519 41	2,480 59	
6,000 00	6,000 00		
37,000 00	116 00	36,884 00	
2,400 00	2,175 00	225 00	
6,000 00	6,000 90		25
10,800 00	5,700 55	5,099 45	

STATEMENT F

Date of Act.			Class 1—Joint Stock Turnpikes.
1850,	March	21	Grave Creek and Penn. State Line...
1853,	March	29	Gilmer and Braxton .....
1850,	March	19	Gilmer, Ripley and Ohio .....
1837,	March	1	Giles, Fayette and Kanawha.....
1849,	March	15	Hardy and Winchester .....
1849,	March	15	Hampshire and Morgan .....
			Hardy and Randolph .....
1848,	March	28	Harrisville .....
1850,	February	9	Hedgesville and Potomac.....
1849,	March	9	Hillsborough and Harper's Ferry....
1838,	March	2	Holiday's Cove .....
1832,	March	20	Huntersville and Warm Springs....
1851,	March	29	Holiday's Cove and New Cumberland.
1837,	March	30	Ice's Ferry Road .....
1846,	February	2	Kanawha and Logan .....
1848,	February	25	Kingwood and West Union .....
			Letart's Falls and New Columbia....
1834,	March	12	Lewisburg and Blue Sulphur.....
			Leading Creek and Buffalo .....
			Logan, Raleigh and Monroe .....
1848,	February	11	Marshall and Ohio .....
1849,	March	17	Martinsburg and Potomac .....
1849,	January	20	Martinsburg and Winchester.....

—(*Continued*)

Amount of the Appropriations.	Amount Expended.	Amount Unexpended.	Miles Length.
$ 4,800 00	$ 1,800 00	$ 3,000 00	4¾
7,200 00	6,699 80	500 20	26¼
30,000 00	29,974 80	25 20	61
45,000 00	44,990 60	8 40	
23,400 00	23,400 00		70
6,600 00	6,510 00	90 00	18
18,000 00	7,134 78	10,865 22	
8,100 00	6,000 00	2,100 00	20¾
6,000 00	6,000 00		20¾
6,000 00	6,000 00		8
15,000 00	10,650 00	4,350 00	6
10,359,24	6,159 24	4,200 00	26¼
2,400 00	2,400 00		8
1,358 00	1,358 00		5¼
5,000 00	5,000 00		52
40,000 00	34,083 18	5,916 87	31
21,000 00	2,950 00	18,050 00	
4,950 00	4,950 00		15¼
9,600 00	5,847 84	3,752 16	
27,600 00	7,320 24	20,278 76	
12,000 00	11,948 75	56 25	9¾
18,000 00	15,290 00	2,710 00	12½
27,000 00	27,000 00		22¼

STATEMENT F

Date of Act.			Class 1—Joint Stock Turnpikes.
1854,	February	18	Middleway and Gerardstown .....
1848,	March	24	Milwood and Berryville .....
			Moorefield and North Branch.....
1849,	March	15	Moorefield and Alleghany .....
1849,	March	15	Morgantown and Bridgeport .....
			Morgantown and Beverly .....
1851,	February	25	Morgan and Frederick .....
1851,	March	28	Newark .....
1850,	February	25	New Creek and Hardy .....
1848,	April	4	New Manchester .....
1850,	March	11	Patterson's Creek Valley .....
1851,	February	17	North River .....
1850,	March	11	Parkersburg and Elizabethtown ....
1853,	March	30	Pleasant Valley and Tunneltown....
1851,	March	4	Potomac .....
1850,	February	18	Ravenswood and Reedy Creek .....
1851,	March	21	Reedy and Harrisville .....
1836,	January	13	Red and Blue Sulphur Springs.....
1851,	March	12	Ritchie and Gilmer .....
1854,	February	28	Raleigh and Boone ....
			Raleigh and Wythe Line .....
1851,	March	10	Salem and Harrisville .....
1851,	March	31	Sandy .....

—(*Continued*)

Amount of the Appropriations.	Amount Expended.	Amount Unexpended.	Miles Length.
$12,000 00	$11,943 75	$ 56 25	12
9,000 00	9,000 00		6½
39,300 00	28,137 75	11,162 25	
10,200 00	8,779 78	1,420 22	27½
27,600 00	10,687 40	16,912 60	36
7,999 96	2,999 96	5,000 00	
9,000 00	8,005 00	995 00	20
3,600 00	3,000 00	600 00	10
6,000 00	5,431 24	568 76	20½
2,000 00	2,000 00		6
9,900 00	9,000 00		37¾
5,400 00	5,400 00		24½
4,800 00	4,800 00		21⅝
6,000 00	4,078 45	1,921 55	28
2,700 60	2,489 70	210 30	9½
9,000 00	9,600 00		23
7,200 00	1,751 87	5,448 13	44¾
8,856 00	8,856 66		32¾
9,000 00	8,891 18	108 82	51
1,800 00	1,800 00		39
4,800 00	2,800 00	2,000 00	
7,200 00	3,817 92	3,382 08	39
3,000 00	3,000 00		24

STATEMENT F

Date of Act.			Class 1—Joint Stock Turnpikes.
1851,	March	24	St. Marys .....
1816,	January	31	Shepherdstown and Smithfield .....
1849,	March	15	Sweet and Salt Sulphur Springs....
1847,	February	1	Sistersville and Salem .....
1850,	February	7	Shinston .....
1830,	February	18	Smithfield, Charleston and Harper's Ferry .....
			Walnut Gap Road .....
1848,	March	9	Weston and Fairmount .....
1848,	March	25	Weston and Gauley Bridge .....
1850,	March	7	West Milford and New Salem .....
1847,	March	20	Wheeling, West Liberty and Bethany
1822,	March	2	Wellsburg and Washington .....
1849,	March	15	Wellsburg and Bethany .....
			Weston and West Union .....
			West Union .....
1849,	March	15	Williamsport ....
1831,	January	8	White and Salt Sulphur .....
			Total .....

—(*Continued*)

Amount of the Appropriations.	Amount Expended.	Amount Unexpended.	Miles Length.
$ 6,000 00	$ 6,000 00	$	24
18,575 00	18,575 00		13¾
10,200 00	10,104 00	96 00	29
20,000 00	20,000 00		26½
13,302 26	13,302 26		33½
14,000 00	14,000 00		14
1,800 00	1,305 37	494 63	
98,000 00	97,962 50	37 50	40¾
66,000 00	64,098 31	1,901 69	106
13,800 00	10,526 32	3,273 68	29¼
21,000 00	21,000 00		15¼
7,071 01	7,071 01		6
16,200 00	12,590 22	3,609 78	6
8,400 00	5,538 21	2,861 79	
3,200 00	3,054 00	146 00	
6,000 00	5,130 65	869 35	15¾
4,000 00	4,000 00		20½
$1,108,620 14	$906,196 32	$202,428 82	

STATEMENT F

Date of Act.		Roads Constructed Wholly on State Account.
		Alleghany and Huntersville .....
		Abbs' Valley and Tug Road .....
		Beverly and Fairmount .....
		Cove Spring and White House Road.
		Clear Fork Road .....
		Franklin and Monterey .....
		Fairmount and Wheeling .....
		Huttonsville and Huntersville .....
		Huntersville and Lewisburg .....
		Marlin's Bottom and Lewisburg ....
		Middlefork .....
1831, March	19	North Western Turnpike .....
		Ohio River and Maryland Road.....
		Princeton and Red Sulphur Springs..
		Staunton and Parkersburg .....
		Slavin Cabin and Summersville.....
		Wyoming Court House and Bluffs ..
		Road from South Branch to Petersb'g
		Road from South Branch to Brook's Gap .....
		Berryville and Charlestown .....

—(*Continued*)

Amount of the Appropriations.	Amount Expended.	Amount Unexpended.	Miles Length.
$11,600 00	$11,462 67	$ 137 33	
5,000 00	4,450 00	550 00	
77,000 00	75,384 65	1,615 35	
2,500 00	2,500 00		
3,000 00	600 00	2 400 00	
14,000 00	14,000 00		
31,848 85	31,848 85		
23,168 72	23,168 72		
20,000 00	19,976 47	23 53	
12,615 09	12,615 09		
15,000 00	14,467 34	532 66	
452,579 87	452,579 87		
95,934 37	95,934 37		
4,200 00	4,200 00		
368,277 51	355,864 30	12,413 21	234
37,000 00	16,372 08	20,627 92	
3,000 00	1,894 66	1,105 34	
900 00	900 00		
1,400 00	1,400 00		
6,000 00	6,000 00		
$1,185,024 41	$1,115,619 07	$ 39,405 34	

STATEMENT F—(*Continued*)

Class 3—Bridge Companies.

Date of Act.	Amount of the Appropriations.	Amount Expended.	Amount Unexpended.
Cheat River	$ 6,000 00	$ 4,612 50	$ 1,387 50
Coal River	3,000 00	3,000 00	
Fairmount and Palatine	12,000 00	12,000 00	
Guyandotte	12,000 00	12,000 00	
Morgantown . ..	24,800 00	24,800 00	
South Branch . .	4,200 00	4,200 00	
Virginia and Maryland	10,000 00	10,000 00	
Elk River	6,000 00	6,000 00	
Total	$ 78,000 00	$ 76,612 50	$ 1,387 50

STATEMENT F—(*Continued*)

Class 4—Navigation Companies.

Date of Act.	Amount of the Appropriations.	Amount Expended.	Amount Unexpended.
Coal River Co....	$ 96,000 00	$ 96,000 00	$
Guyandotte River Company	120,000 00	106,800 00	13,200 00
Tug Fork River Company	5,040 00	5,040 00	
Total Navigation Companies ..	$221,040 00	$207,840 00	$ 13,200 00

STATEMENT F—(*Continued*)

Class 5—Railroads.

There is but one item of expenditure, under this head, viz.: The appropriation for the Covington & Ohio Railroad, say		$ 500,000 00

Class 6—Miscellaneous.

Stock of Virginia in West Virginia banks	$ 539,600 00	
The Lunatic Asylum at West on	125,000 00	
The Lewisburg Law Library	20,000 00	
		$684,600 00

TABLE 1.

Showing the pro-rata expenditures in Virginia on account of certain of the foregoing improvements that lie in both States.

Hardy and Winchester	$ 11,700 00	
Hillsborough and Harper's Ferry	4,800 00	
Martinsburg and Winchester	13,500 00	
Millwood and Berryville	4,500 00	
Franklin and Monterey	7,000 00	
Northwestern Turnpike	38,192 40	
Staunton and Parkersburg	91,246 20	
*Berryville and Charlestown	6,000 00	
		$176,938 60

*It is understood that this road has been sold by the State of Virginia.

RECAPITULATION.

Total expenditures on account of Joint Stock Turnpikes....
Total expenditures on account Roads constructed on State account .....
Total expenditures on account Bridge companies .....
Total expenditures on account Navigation companies.....
Total expenditures on account Railroads.....
Total expenditures on account Miscellaneous.....

Total .....

From these deduct on account of Virginia's pro rata for certain expenditures as given in Table 1—Statement F.....
Leaving a total expenditure in West Virginia of.....
Deducting from this total the stock of Virginia in West Virginia Banks and the value of the Lewisburg Law Library, as given in Class 6, viz.: .....
And we have left as the total expenditure in West Virginia on account of Public Improvements .....

Note.—It does not appear from any documents examined what exact proportion of this $3,343,929.29 enters into the bonded debt of Virginia, and what proportion was paid out of the current revenue. That matter is left open for settlement hereafter.

Amount of the Appropriations.	Amount Expended.	Amount Unexpended.
$1,108,620 14	$ 906,196 32	$ 202,423 82
1,185,024 41	1,145,619 07	39,405 34
78,000 00	76,612 50	1,387 50
221,040 00	207,840 00	13,200 00
500,000 00	500,000 00	
684,600 00	684,600 00	
$3,777,284 55	$3,520,867 89	$ 256,416 66

176,938 60
$3,343,929 29

559,600 00
$2,784,329 29

STATEMENT G.

Showing the property and other assets of the State of Virginia on the first day of January, 1861, *not included in any of the foregoing tables.*

Lunatic Asylum at Williamsburg	
Lunatic Asylum at Staunton	
Deaf, Dumb and Blind Asylum at Staunton	
Virginia Military Institute at Lexington	
University of Virginia at Charlottesville	
Penitentiary of Virginia at Richmond	
Armory of Virginia at Richmond	
Capitol and public grounds, Richmond	
Governor's House, Richmond	
Public miscellaneous library	
Public Law Library	
Total	$3,875,000 00

OTHER ASSETS.

By a provision of an act of Congress of June 23, 1836, there was directed to be deposited with the State of Virginia of the surplus revenue of Unites States, $2,937,237.34.

And it appears by the document, number 52 of the session of 1839-40, that of the amount there was actually received by Virginia and subscribed to the stock of certain banks of the State, the following amount, say, $1,932,809.33.

Whether the residue of this sum was ever paid to Virginia, the Commissioners have not ascertained.

The Literary Fund, as given in Document No. 4, Second Auditor's Report of September, 1884, is $1,509,853.16.

This fund is given as it stood many years ago. By the first of January, 1861, it had probably increased, from fines, forfeitures and amercements, one or two hundred thousand dollars.

STATEMENT H—Banks.

Settlement showing the amount of stock owned by the State of Virginia in the several banks in the year 1840, *and how that stock was paid for.*

In What Banks.	In What Name Held.			Total number of Shares.	Par value of Shares.
	Commonwealth of Virginia.	Board of Public Works.	Literary Fund.		
(A) Bank of Virginia	$ 3,250	$3,365	$2,121	13,736	$1,373,600
(B) Farmers Bank of Virginia ..	5,050	3,442	1,054	9,546	954,000
(C) Bank of the Valley of Va. .	3,700	1,000	52	4,792	579,200
(D) Northwestern Bank of Va. ..	4,000	271	500	4,771	477,100
(E) Exchanke Bank of Va. ..	9,000	50		9,059	905,900
(F) Merchants and Mechanics Bank of Wheeling		125		125	12,500
	$ 25,000	$13,262	$3,727	42,029	$4,302,900

Notes.—(A) Bank of Virginia.—Subscribed by the Commonwealth per act of 30th January, 1804, payable in ten annual installments, to meet which the tax on merchant's license and dividends on the stock itself was pledged. The dividends during the time amounted to .....$ 300,000 00
Bonds and profit on sale of new stock of the bank, under act 20th January, 1814 ..... 494,700 00

Purchased out of the disposal funds of the Board of Public Works	41,800 00
Purchased out of the permanent capital of the Literary Fund	205,600 00
Out of undrawn school quotas in treasury	6,500 00
Subscribed and paid for out of the United States surplus revenue on deposit in the treasury	325,000 00
	$1,373,600 00

(B)—FARMERS BANK OF VIRGINIA.

Bonus under act 13th February, 1812	$ 333,400 00
Purchased out of permanent fund of the Board of Public Works	4,700 00
Out of the disposable funds of the same	6,100 00
Out of the permanent capital of the Literary Fund	105,400 00
Subscribed and paid out of the United States surplus revenue on deposit	505,000 00
	$ 954,600 00

(C)—BANK OF THE VALLEY.

Bonus under act February, 1817	$ 90,000 00
Purchased out of the disposable funds of Board of Public Works	100,000 00
Purchased out of permanent capital of Literary Fund	9,200 00
Paid out of United States surplus revenue	370,000 00
	$ 569,200 00

(D)—NORTHWESTERN BANK.

Bonus under act 5th February, 1817	$ 23,100 00
Bonus under act 25th March, 1837	4,000 00

Paid out of United States surplus revenue.....	282,809 33
Paid for dividends of stock itself	24,908 67
Paid for State's 6 per cent. scrip	92,282 00
Paid for out of permanent capital of the Literary Fund	50,000 00
	$ 477,100 00

(E)—EXCHANGE BANK OF VIRGINIA.

Bonus under act 25th March, 1837.....$	5,900 00
Paid for out of United States revenue.....	450,000 00
Paid for in State's 6 per cent. scrip	295,000 00
Due on subscription of $900,000 by Commonwealth, $155,000, which was subsquently paid	155,000 00
	$ 905,900 00

(F)—MERCHANTS AND MECHANICS.
Bank of Wheeling.

Bonus under act of 7th March, 1834.....$	12,500 00

Mr. Holt: We also read into the record report of the Senate Finance Committee of 1873 dated Charleston, December 22, 1873, and signed J. M. Bennett, Chairman, John W. Grantham, A. E. Summers, J. T. McClaskey, R. B. Sherrard and Elliott Vawter, found on pages 490 to 493, inclusive, of the book entitled Virginia v. West Virginia, Volume 1, Record of Suit as follows:

REPORT OF THE SENATE FINANCE COMMITTEE OF 1873.

State of West Virginia,
Charleston, December 22, 1873

The attention of the Committee on Finance has been repeatedly called by resolutions introduced in the Senate and otherwise, to the subject of Virginia's public debt and the share

which it is equitable for West Virginia to bear and pay. The committee under these frequent promptings have been constrained to give the subject their most earnest and careful attention as a matter fraught with more than ordinary consequence to the State, and have come to a conclusion satisfactory to themselves, and it is believed that the conclusion of the committee will be approved by the judgment of the people interested, and will receive the sanction of any tribunal before whom it may be brought for adjudication.

It is necessary to a full understanding of this subject that reference be had to the treaty stipulations of fundamental condition, by whatsoever name they may be called, between the representatives of the people of Virginia and the people desiring separation, by the creation of a new State, which led to the formation of a constitution, its adoption by the people and its approval by Congress, and the establishment of the State of West Virginia.

The ninth section of "an ordinance to provide for the formation of a new State out of a portion of this State, (Virginia) "passed August 20, 1861, provided, that "the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the 1st day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of the debt was contracted; and deducting therefrom the monies paid into the treasury of the commonwealth from the counties included within the said new State during the same period."

Upon compliance with the conditions contained in the ninth section and here quoted the people within the counties now constituting West Virginia, were authorized to form a constitution to be presented to Congress for its approval and for the admission of the new State into the Union.

Accordingly a constitution was adopted by a convention of the people from the several counties now constituting the State of West Virginia and to carefully guard and secure the rights prescribed by Virginia as a condition precedent to the formation of the new State, a provision was incorporated into it

to secure the exact fulfillment of the treaty stipulations as aforesaid.

By article eight, section eight of the constitution, it was provided that "an equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State and that the Legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

This subject has received a careful consideration by commisioners appointed by authority of this State, and while this committee see much to approve in the Report of the Debt commissioners of West Virginia on this subject for their great research and the ability with which they handled the subject, considering the peculiar difficulties under which they labored, as shown in their report, and in the illustration of the many problems that may rise in the discussion of this subject, yet this committee think the controlling question has not been discussed by the Commissioners by reason of the embarrassment surrounding their action; and the Committee beg leave to refer to the report which is appended hereto and marked No. 1.

In construing the legal principles involved in this matter, it may be assumed that a private creditor of Virginia cannot sue West Virginia for contribution; for that is prohibited by the Constitution of the United States; see article eleven of amendments United States Constitution which declares that "the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens or subjects of any foreign State."

But notwithstanding this prohibition the third article extends the judicial power of the Supreme Court to controversies between two or more States. Under this provision of the Constitution it is within the power of Virginia to institute and prosecute any suit against West Virginia touching the controversies respecting the public debt.

If the conditions precedent to our admission as a State, prescribed by Virginia herself, be accepted as a true basis of adjustment and final settlement, Virginia's claims for expenditures can very properly be offset by our contributions.

Upon this basis the whole subject is one of easy solution, containing no other items than that of creditor or debtor with balances to be struck upon agreed principles. The legislative history of Virginia establishes beyond a doubt that the first act of Assembly to create a debt or issue a bond was passed in the year 1821, and the executive records show that the first bond issued by the commonwealth of Virginia was in the year 1822.

From this latter period we date the commencement of our liability under the fundamental stipulations prescribed by Virginia for our separtation, which were accepted by the people of this State, approved by Congress, and the President of the United States, as the head of the executive department and subsequently affirmed by the Supreme Court of the United States, and may at this day be accepted by the public as firmly engrafted into obligations and rights as if the same were constitutional provisions emanating from the supreme power.

The concurrent approval, binding alike upon the people of Virginia and West Virginia, lead us to the following conclusions which are the results of a mathematical demonstration, founded upon public and official records, appropriate to determine how much of the bonded debt of Virginia existing prior to January, 1861, was expended within the limits of this State, and how much was contributed by the counties forming the same.

The report of the Debt Commissioners hereinbefore referred to shows that all State expenditures within this State prior to January, 1861, amounted to $3,366,929.29 and although it is apparent that bonds for quite a large amount of this sum were never issued, nevertheless the expenditures would seem to import an obligation upon our people to return every dollar which had been so contributed to the development of the territory of our State.

The committee have not entered into the tedious process of calculating the interest, for the obvious reason that there

would be as much interest on our contributions to as upon the receipts of Virginia.

The committee have therefore assumed the foregoing sum of $3,366,929.29 as importing a debt upon West Virginia to be gathered and itemized from the report of the Debt Commissioners aforesaid.

From the amount of the foregoing expenditures, must be deducted the moneys paid into the Treasury of the Commonwealth of Virginia, from the counties included in this State during the same period. For the sake of convenience the committee have charged to Virginia, not the whole contribution but the surplus after deducting a just proportion of the ordinary expenses of the State government. Our total contributions from taxes to the State of Virginia in the year 1822, amounted to $63,000; and in that year the total of the expenses of the State government chargeable to us was $47,000, leaving an excess of $16,000, which would go to the liquidation of the debt created for expenditures within our midst.

This small surplus in 1822, by the process of an increased rate of taxation, and the increased value of the subjects to be taxed, the rate rising from 8 cents to 40 cents on every one hundred dollars in value, made the excess of our contributions to the treasury of Virginia in the year 1860 amount to $512,000, rejecting fractions.

Thus our contributions to the treasury of Virginia arising from taxes collected in that year amounted to $647,079.96. In the same year our proportion of the ordinary expenses of government amounted to $135,000, which left the surplus aforesaid of $512,079.96. It will be observed that the committee have referred only to the surplus in 1882 and in 1860. The surplus for the intermediate periods swell the aggregate of our contributions to $3,892,000 which is in excess of expenditures within our limits by $525,000.

It will thus be seen that our State is not indebted and the Committee confidently advance this statement, not only as containing the true basis of settlement between the two States, but it is supported by incontrovertible facts by conditions precedent prescribed by Virginia under the restored government

which government has been approved as aforesaid by Congress by the Executive and by the Supreme Court of the United States.

Notwithstanding the satisfactory condition of our finances and our material resources, the attention of the committee has been called to the fact that "West Virginia certificates" and "West Virginia bonds" are quoted at the marketable value of from five to fifteen cents on the dollar in money of the stock exchanges and markets of the United States. This of course has a tendency to depreciate the just credit to which this State is entitled. For it is acknowledged that the credit of a State depends upon the value of its taxable property, the amount of its indebtedness and above all upon its punctuality in meeting its engagements. These quotations imply two things: first, that we owe a debt; second, that we are either unable or unwilling to pay the debt which beget a want of confidence in the minds of the public who are uninformed with respect to the true condition of West Virginia; and operate unjustly and injuriously upon us. It would seem to be enough for us to say and we make the assertion without the fear of contradiction, that we owe no debt, that we have issued no bonds and our constitution forbids the creation of a liability in the nature of a public debt; and with this assurance we cannot demand more nor expect less of all honorable stock brokers and bankers than the withdrawal from the list of indebted states the name of West Virginia.

"West Virginia certificates" and "West Virginia bonds" do not exist. No bonds have ever at any time been issued by West Virginia and we are prohibited from issuing at any time hereafter any bonds on the faith of this State. The bonds or certificates referred to were issued by Virginia, and West Virginia had no agency or participation therein.

In respect to the credit which our conduct and property would imply, we might be indifferent, but we have higher aims and more ennobling ambition. We desire to invite immigration to cultivate our forests, and to develop our mineral resources; this cannot be done with success, when men of thrift and capital are deterred from immigrating to and within our borders

by reason of the persistent and unjustifiable misquotations of our credit. No one could be expected to invest capital within a State which has so far absorbed the substance of the people thereof that its good faith and obligations were only worth five cents on the dollar. West Virginia owes no debt, has no bonds for sale and asks no credit.

J. M. BENNETT,
Chairman.
JOHN W. GRANTHAM
A. E. SUMMERS
J. T. McCLASKEY
R. B. SHERRARD
ELLIOTT VAWTER

Mr. Holt: I will ask Mr. Hillman to take the stand one minute.

CONWAY W. HILLMAN.

recalled for further examination in behalf of the defendant, testified as follows:

By Mr. Holt:

Q. Mr. Hillman, have you any explanation to make of an item found in the balance sheet of the Richmond, Fredericksburg and Potomac Railroad Company relative to Confederate securities?

A. Yes, sir, I have.

Q. Make it, please, as briefly as you can.

A. On the trial balance sheet of March 31, 1863, being Defendant's Exhibit No. 2, Sub-Sheet No. 1, 1863, we have certificates of debt due in U. S., United States, in 1857, 1869, and in 1879 for $1,606.32, $264,979.40 and $138,653.20. In the following table, being Defendant's Exhibit sub-Sheet No. 2, and page 5 of the blue prints, we have these same items marked as certificates of debt due in C. S., for Confederate States. We have the same notation made in the balance sheet of September 30, 1864. The two balance sheets last mentioned are not printed

but written out in hand and on there it is marked C. S. or Confederate States. I have examined the subsequent trial balance for 1865 of the Richmond, Fredericksburg & Potomac, which is a printed one, and thereon are these items I mentioned as due in the U. S. My attention was called to them by the fact that a certificate of debt due in the C. S. or Confederate States in 1857 was an item which could not be considered as having any existence because the States were not in existence. I therefore took occasion to look that up with this result. However, the copies of the record on file in the R. F. & P. read C. S. for those two exhibits.

Q. Do their reports or balance sheets for the years preceding read in U. S.?

A. Yes, sir.

Q. And for the years succeeding U. S.?

A. Yes, sir.

Q. Are they the same items?

A. Yes, sir.

Q. In your examination of such papers and documents and records as you have examined relative to the financial condition of those companies in which the State of Virginia owned stock that are set forth in the supplemental answer did you find anything to indicate that there was any readjustment of securities by these companies issuing these securities passing from Confederate to what may be called a Federal basis?

The Master: From one period to another.

A. Yes, sir. In the Richmond & Danville Railroad there was an adjustment wherein on both the asset and liability side of the account one-half was taken off on account of Confederate currency. It did not, however, interefere with the apparent solvency of the company according to the trial balance sheet where the reduction was made.

Q. How was it with respect to all the other companies?

A. There was nothing on them to show any reductions on account of the Confederate currency or the change from one currency to the other.

Q. Did they then move from the Confederate regime into the new regime without any adjustment of securities?

A. I should say, sir, that they did.

Mr. Holt: That is all.

CROSS-EXAMINATION

By Mr. Harrison:

Q. You are now testifying in relation to the Richmond, Fredericksburg & Potomac Railroad in respect to something that you have investigated since your examination was closed, are you not?

A. Yes, sir.

Q. And you say that your attention was called to the particular subject that you have since investigated. How was your attention directed to it?

A. By my assistant, Mr. Leitch, who came to me and asked whether that should be Confederate States or the United States.

Q. Have you brought here a transcript of what the documents show that you have since investigated with reference to that matter?

A. No, sir, I have not.

Q. Where are they?

A. On file in the Treasurer's office of the Richmond, Fredericksburg & Potomac Railroad Company, First National Bank Building, this city, room 1401.

Q. Did you examine them?

A. No, sir. I sent one of my men to look up the point, the same one that made the original documents for this exhibit.

Q. So you have no information on the subject then except what you derived from someone else?

A. Except what one of my men took there under my direction.

Q. Why didn't you bring a transcript of the books here in order that we might have it before us?

A. I did not consider it necessary.

Mr. Holt: If these gentlemen desire, we will get a transcript of them.

The Master: If they desire it I will give them an opportunity to examine it.

Mr. Harrison: I may want to do that. It is very difficult to examine about something we do not see.

Q. In reference to the Richmond & Danville, you have testified to what their books show. That investigation has been made since your testimony closed, you say?

A. Yes, sir.

Q. Did you make it?

A. Yes, sir.

Q. Whereabouts did you make it, where?

A. From a volume of reports which was handed me, the first printed report of that road, which I understand is the only one in existence, which was withdrawn from the engineers of the Southern Railroad, in North Carolina at present, and sent to me.

Q. Who handed it to you?

A. Mr. Howard handed it to me.

Q. Where is it?

A. I have returned it.

Q. To whom did you return it?

A. To the party that handed it to me.

Q. Mr. Howard?

A. Yes, sir.

Q. Who is he?

A. He is one of the men in this investigation.

The Master: You mean one of the men employed by West Virginia in this matter?

The Witness: Yes, sir.

The Master: Where is the book, is it available?

The Witness: Yes, sir, I can have it brought for investigation.

The Master: You ought to have it right here.

The Witness: Your Honor, I will state that I did not anticipate that question and therefore I did not hold on to the book.

The Master: You ought not to expect to testify to the contents of a book at this stage of this hearing without having the book produced. It is so obvious that it is hardly worth talking about that the other side would want to see it. Send and get it right away.

Q. Do I understand that your statement with reference to the transition from the one period to another is your conclusion from what you saw?

A. Yes, sir.

Q. And that is all; it does not purport to state a fact; you do not undertake to state a fact shown by the books, but your deductions from what you did see, is that right?

A. That is correct.

Mr. Harrison: That is all I want to ask him.

The Master: Do I understand you want an opportunity to examine the records that he has testified to before you conclude your cross-examination?

Mr. Harrison: Of course we would like to have had the original sources from which he traced his conclusion and his statement, but I do not want to delay this matter for that purpose.

The Master: So far as I am concerned, you have until six o'clock tonight. I want the record to show that you have an opportunity to go to those original sources if you desire to.

Mr. Holt: We are sending for the book, your Honor.

The Master: Yes, but there are other books he has testified about.

Mr. Holt: It was just that one of a balance sheet of the Richmond, Fredericksburg, & Potomac.

The Master: If the other side want an opportunity to examine these books that have been testified to in relation to the Richmond, & Danville Railroad, why, I should give them the opportunity.

Mr. Holt: In order to avoid any trouble, if that will relieve the situation, I am perfectly willing to strike out of the record any reference to the Richmond & Danville that has been indulged in now, and that will leave it to the furnishing of a balance sheet of the Richmond, Fredericksburg & Potomac.

Mr. Harrison: Then Mr. Hillman can go.

The Master: Everything that is to be furnished is to be furnished today, this afternoon, and that means that if Mr. Hillman stays he stays, and if it means he goes, why he goes, but anything that either side can put into this case that they

have here that they want to get in I want them to put in today.

Mr. Holt: I was not caring anything about a specific statement concerning the Richmond & Danville which led to this book business; that was volunteered. I say it may go out of the record if that will relieve the situation.

The Master: Whatever is agreeable to you.

Mr. Holt: And that leaves but the one thing for investigation, and that is the statement relative to the balance sheets of the Richmond, Fredericksburg & Potomac, and in order that your Honor may understand what that is, I will state it. It seems that in the balance sheet of that road, that he utilized in making up his exhibits, that there was an item of assets there that were set down as Confederate States securities, when as a matter of fact further investigation of the books of that company showed that the same item was in there and marked as U. S. securities, years before the Confederate States were ever formed.

The Master: In the same amount?

Mr. Holt: In the same amount, and the same item was likewise in the balance sheets of that road following the year he utilized again set down as U. S. securities.

The Master: You simply wanted to show the continuity of the item?

Mr. Holt: That is all.

The Master: As far as I am concerned, Mr. Hillman can go this minute.

Mr. Harrison: Yes.

The Master: It is all up to the counsel for Virginia. My only suggestion is this, I want everything put into this case that can be put in that is available from either side now. All that is suspended is the deposition of Mr. Axtell to be taken in New York, but my original statement still holds, that if it turns out on the preparation of the briefs and the argument that there has been anything inadvertently omitted, it may be put in; but that does not apply to testimony that you have here now. Whatever you have here now must go in now. Do I make that clear?

Mr. Harrison: Yes, sir.

Mr. Holt: I want this understood, when I said a moment ago that the reference to the Richmond & Danville might be stricken out of the record I did not mean that my general question or his answer thereto should be stricken out.

The Master: But that relates to the Richmond & Danville.

Mr. Holt: That relates to all of these securities. I asked whether or not they did not pass from one regime to another without any jar in their administration.

The Master: The question was to establish the fact that so far as the accounts of these various companies that he has examined are concerned there is no distinction between the periods.

Mr. Holt: And then at that point he volunteered the exception in the case of the Richmond & Danville which had a discount of fifty per cent., on both sides of the account.

The Master: It was necessary for him to make that explanation because his general answer would have covered everything.

Mr. Holt: We will wait a moment for the book, Your Honor.

By Mr. Harrison:

Q. When you say that the books—and I thought the question confined you to the Richmond & Danville, but if you meant to apply to all of the securities, I will ask you again—did you say that the books of the various railway companies after the close of the war showed a transition from one period to the other without any indication of change in value of the securities of the company?

A. Yes, sir.

Q. What other companies have you examined, what other books have you examined for the purpose and when did you do it besides the Richmond & Danville?

A. We ran up the Richmond, Fredericksburg & Potomac, the Norfolk & Petersburg, the Southside and the Virginia and Tennessee were also examined by me. The Richmond, Fredericksburg & Potomac running continuously, the other roads on

sub-balance sheets of each road under the general classification of the A. M. & O. running to 1872.

Q. You say you made these investigations since your testimony was closed?

A. Yes, sir.

Q. Where did you examine the Southside Railroad books to testify as you have done this morning?

A. It was a document from the library which is in the former President Davis' house. It is not the State Library. I do not recall the name of the institution at present, but this was discovered and handed to me and I noticed the seal of the public library, whatever its name may be, on the side of it, and looked over that to see whether these roads were still at this date after the close of the war in an apparently good shape.

Q. That is a document then which has been discovered since you testified?

A. Yes, sir.

Q. And had not before been referred to?

A. No, sir.

Q. Have you got it with you?

A. No, sir.

Q. And you cannot describe it other than to call it a document?

A. It is a regular annual report.

Mr. Anderson: It is from the Confederate Memorial Association.

By The Master:

Q. Was it a printed volume?

A. Yes, sir.

By Mr. Harrison:

Q. Where did you find out about this Virginia & Tennesse and Orange & Alexandria?

A. I did not testify to the Orange & Alexandria. The Virginia & Tennessee, the Southside and the Norfolk & Petersburg are all included in this volume to which I have referred.

Q. And what do you say that volume shows, as of what dates?

A. 1872.

Q. You were taking the date 1872 to show that the assets of those roads possessed the same value after the close of the war in April, 1865, that they did just before the close?

A. I did not say that they possessed the same value. I said that it showed that they passed from one set of conditions, which might be called Confederate States conditions, to United States conditions without being affected to the extent that they became worthless.

Q. How do you know that, how do you know that the entries that you saw show anything about their worthlessness or their value anything more than your conclusion?

A. I know nothing more than the conclusions which I have drawn from the entries that I have seen.

Q. There is a gap, a hiatus between 1865 and 1872 in respect to the dates upon which your conclusions are drawn and with respect to what you call the transition period, is there not?

A. Yes, sir.

Q. You don't know what is shown between those dates?

A. No. I found nothing on these three roads between those dates.

By The Master:

Q. What did you see on those dates, the trial balances?

A. Yes, sir.

Q. How did the cost of the road in 1872 compare with the same item that we carried in 1861?

A. The cost of the road was larger on the latter date than on the former.

Q. How much larger?

A. I do not recall, sir.

Mr. Harrison: I am through.

By Mr. Anderson:

Q. Mr. Hillman, did you examine the books of any of these companies for 1865?

A. No, sir, I do not think that I did; I do not recall having done so.

Q. How could you say then that their accounts were carried without any change from 1864 and 1865 to 1865 and 1866?

A. From the reason that we ran these accounts up to 1863, 1864 or possibly 1865, I am not sure, but I do not think we ran any up to 1865, and then came the break of the war, and then we took them up at this new date, and therefore I have jumped from the date examined in 1863 or 1864 up to the next date that I found the trial balance, which I believe was 1872.

By The Master:

Q You did not examine the accounts or books in connection with either date, you got your results from the trial balance?

A. Yes, sir.

Q. And what the accounts or books may or may not have shown you only infer from the condition of the trial balance sheets that you found?

A. Yes, sir.

Q. You said that in case of one road the cost of the road in '72 was in excess of what it was in '61. What road was that?

A. I think the Virginia & Tennesse.

Q. How about the other two?

A. The Southside and the Norfolk & Petersburg, I think they all showed an increase.

Q. How much of an increase?

A. I did not examine that, your Honor, with any attention that would fix it in my memory.

Q. You were examining it so far as to satisfy your mind that there had not been any change in condition as the result of the ending of one period and the beginning of the other. Do you have memory enough about it so that you can estimate the percentage of increase?

A. No, sir.

Q. Do you have memory enough so you can say whether it was fifty per cent?

A. My memory on the point is utterly blank, sir; I fixed no figures in my memory. If I had expected—

Q. The only reason why you are able to state—

A. If I had expected this question I would have prepared myself on it. The question really was unexpected on this or I would have prepared myself.

Q. Then the only reason why you are able to state so far as you do state that there was no change in the accounts and securities from one period to the other is the information you get from a trial balance of 1872, that is right, is it?

A. Yes, sir.

Q. And from that you look back to the trial balance in 1861?

A. Yes, sir.

Q. And you did not see anything on it that suggested to your mind that there had probably been any change on account of the change in the market or par value or the exchange value of the medium of exchange?

A. No, sir; I merely looked at the surplus and saw there was a surplus in the earlier year and a surplus in the latter year, and I stopped right there.

Q. Then you did not look at the cost of the road at all?

A. Yes, sir, I did, but I did not carry anything in my memory; but I knew the cost of the road had increased.

Q. Had the surplus increased or decreased?

A. I do not know, sir.

Q. The examination produced a pretty hazy result in your mind?

A. Yes, sir, because I was making a casual examination for a general purpose, without any idea of making a definite examination.

Q. You cannot give me a single detail as a result of your examination in relation to a single item?

A. I cannot, no, sir.

The Master: That is all.

By Mr. Anderson:

Q. For all you know, there may have been an adjustment in 1865 as a result of the war basis and then a readjustment when you got around to 1872 as a result of a normal peace basis?

A. Yes, sir. They may have been hit very severely in 1865 and recovered themselves by 1872.

By The Master:

Q. All those things might have happened and there may have been a transition from one period to the other involving modifications as predicated upon the market and the medium of exchange which may not have been reflected in your 1872 proposition at all?

A. Yes, sir.

The Master: That is all.

Mr. Anderson: Those are the facts I supposed the cross-examination would bring out. Your Honor has brought them out.

Mr. Holt: Your Honor, I suppose we will have the liberty if we deem it material to present at New York before the argument a transcript provided we have Mr. Hillman there for purpose of cross-examination, taken from these books upon that subject?

The Master: I think that if that can be done today it ought to be done today. My suggestion as to New York was not for the purpose of relieving the counsel of the responsibility of trying this case out fully before we adjourned. So far as you can of course I do not see any reason why we ought not to suspend this case this afternoon, but I cannot consent that testimony that could be submitted here with the exercise of diligence with the exception of this Axtell matter, can be withheld and suspended until the hearing in New York. I want the hearing now concluded so far as the exercise of reasonable diligence on either side can conclude it. If it should turn out that you have inadvertently omitted anything, that will come up in New York.

Mr. Holt: We will do our best to leave nothing undone.

By Mr. Holt:

Q. Mr. Hillman, can that book be gotten now?

A. I do not know, sir. I will do what I can to get it.

Mr. Holt: When you get out of here, suppose you get that

book, and if we can utilize it this afternoon we will do so, I mean this Confederate Museum book.

The Master: Do you want it, Mr. Harrison?

Mr. Harrison: No, sir, I do not want it now. I am satisfied with the cross-examination on that subject.

Mr. Holt: You are through with Mr. Hillman?

Mr. Harrison: Yes, sir.

Mr. Holt: I might add to this other suggestion that has been made that we are not quite sure whether we have embraced in our offers one or two Auditor's reports of the State of Virginia. When we look over our memorandum if we find that we have not introduced them we will introduce them at New York before the argument. We may have them in. We do not want to stop to check up now.

The Master: We will suspend for two hours or three hours in order to give counsel on either side an opportunity to look over and complete anything that they want to put in. I will suspend now and come back here at three o'clock. I am willing to suspend here for two or three hours to give counsel on either side all the opportunity they desire to look their case over and see if they have omitted anything.

Mr. Holt: My idea is that ten minutes will be enough for us to determine this question.

The Master: Suppose I suspend now for half an hour, and that will be before we go to lunch, and then we can come back here at half past twelve and close up everything. Will that be all right?

Mr. Holt: I have one witness I want to put on the stand. Regarding the transcript of these balance sheets on that Confederate currency question of the Richmond, Fredericksburg & Potomac, we will send down and get them right now. Of course they may require a little adjournment.

Mr. Harrison: We will want to examine the records of that road for several years.

The Master: Why don't you suspend for half an hour and get this thing together? I will do anything you say.

Mr. Holt: I thought that I could get rid of a man who is sitting back of me here, who is the sole remaining witness we have.

Mr. Harrison. Put him on.

The Master: I will do anything you want, suspend or go on.

EVERETT A. DOVER

called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. Holt:

Q. Give the stenographer your full name.

A. Everett A. Dover.

Q. Where do you reside?

A. Charleston, West Virginia.

Q. What public position do you hold there, if any?

A. Chief accountant in the State Tax Commissioner's office.

Q. Have you examined the market quotations upon the stock of the Richmond, Fredericksburg & Potomac Railroad Company for the year 1914 from January 1st to September 1st?

A. I have.

Q. Have you prepared a schedule showing the result of that examination?

A. I have.

By The Master:

Q. From what paper did you get your market quotations?

A. Times-Dispatch, Richmond.

By Mr. Holt:

Q. Did it purport to be a report of the Richmond Stock Market?

A. Yes, sir.

Q. The schedule you have prepared is headed market quotations for stock of Richmond, Fredericksburg & Potomac Railroad reported by Caskie G. Burch & Company, Richmond,

Virginia, as shown by the Times-Dispatch, Richmond, Virginia, filed in the Virginia State Library, January 1, 1914, to September 1, 1914. Will you file it as a part of your testimony and mark it Defendant's Exhibit Dover No. 1?

A. I will file it so marked.

The paper was admitted in evidence and marked Defendant's Dover Exhibit No. 1, September 12, 1914, C. B.

Q. Look at the date July 2, 1914, and state whether or not the quotation showed any bid on the stock of that company.

A. It showed a bid, 300.

Q. It did show a bid, did it?

A. Yes, sir.

Q. What is the amount shown?

A. 300.

Q. Does it show what was asked on that date?

A. Yes, sir.

Q. What amount?

A. 320.

Q. Under the date of July 25th, of the same year, does the exhibit show a bid?

A. Yes, sir.

Q. What amount?

A. 290.

Q. What was asked?

A. 302.

Q. Does this exhibit correctly represent the quotations with the explanations of bid, asked, etc., as taken from the Richmond Dispatch?

A. It does.

CROSS EXAMINATION.

By Mr. Harrison:

Q. It does not show any quotations after July 25th, does it?

A. No, sir.

Mr. Holt: Didn't the Stock Exchange close then?

Mr. Harrison: I presume that is the explanation of it, I suppose so.

By The Master:

Q. Did any of these market reports show any sales of this stock during any of this period?

A. It simply shows bid and asked.

Q. It does not show any sales?

A. No.

Q. So far as these quotations are concerned then, there were no actual transactions in the stock?

A. No, sir.

Q. Did these quotations you have here purport to come from the Stock Exchange?

A. It is headed Richmond Stock Market.

Q. Without indicating the source of the information?

A. It is reported by Caskie G. Burch & Company.

Q. That is, the report in the paper?

A. Yes, sir, I presume they are brokers, I don't know.

Mr. Holt: They reported, as shown by the exhibit, your Honor, the stock exchange quotations, the information that comes from the stock exchange.

The Master: It is headed Richmond Stock Market and purports to be made by some gentleman whose name he gives, and then the information stops there. It does not go far enough to show that it is the result of the action of the stock exchange. There may be more to it. I did not know but that the examination would leave it without bringing it home to the stock exchange.

Mr. Holt: I find it is the Richmond Stock Market. I thought it read stock exchange.

The Master: And the statement in it would not bring it home to the stock exchange.

Mr. Holt: I see I misread the exhibit.

Mr. Harrison: We have no further questions to ask.

The Master: That is all.

Mr. Holt: With the exception of the little odds and ends that they are trying to clean up on those book values, we are done.

The Master: Do you want to suspend for a little time?

Mr. Holt: I suspect we had better suspend.

The Master: For how long would you like to suspend? Would you like to come back after lunch or suspend for half an hour? I will do whatever you wish. Suppose we suspend for fifteen minutes.

At this point a short recess was taken.

CONWAY W. HILLMAN

recalled for further examination, testified as follows:

Mr. Holt: Mr. Hillman during the recess has gone down and made the transcript from the balance sheet of the Richmond, Fredericksburg & Potomac Railroad Company involving the explanation of the difference between the Confederate States securities and the United States involved in one of these schedules, and in the meantime Mr. Harrison and myself have discovered, I did not know it before, that this item appears on the liability side of that balance sheet and not on the asset column.

The Master: Which item?

Mr. Holt: It is an item of $1,500 which was described in some balance sheet as being a United States security and others as a Confederate security. Now, as I understand it, Mr, Harrison after having made that discovery does not care to cross-examine Mr. Hillman on that point or to require of him any transcript from the Richmond, Fredericksburg & Potomac road; is that so, Mr. Harrison?

Mr. Harrison: No, so long as you make the explanation on the record as you are doing.

Mr. Holt: In other words, if they had known that, they would not have made the point. Mr. Hillman is really simply trying to correct—

The Master: So long as that is a transcript of the trial balances, suppose he puts that right into the record. Let him put that in the record and stop right there.

STATEMENT OF THE AFFAIRS OF THE

Page 10.

Cost of Road and Property:		
From Richmond to Aquia Creek	$1,538,804 69	
Cost of new superstructure, heavy iron, &c.	563,649 47	
Engineering expenses to Manassas and Quantico	2,321 87	
Property conveyed by Ed. Robinson	148,308 13	
		$2,253,084 16
Debts Due the Company:		
From individuals on new stock	1,820 00	
From bills receivable	10,118 13	
From indls. in open acct.	32,723 70	
		44,661 92
Investments:		
Stock of this company	21,602 00	
Stock of the Potomac S. S. Co.	38,900 00	
Stock of Seaboard & Roanoke R. R.	42,209 94	
Specie	125 02	
		102,836 96
Cash:		
On hand Sept. 30th, 1865		18,017 69
		$2,418,600 73

R., F. & P. R. R. CO., SEPT. 30, 1865.

Page 11.

Capital stock		$1,142,900 00
Debts due by the Co. (of a permanent nature):		
Coupon bonds convertible, due in U. States, 1875	21,000 00	
Coupon bonds convertible, due in London, 1875	57,333 33	
Convertible bonds due in U. S. in 1875	172,800 00	
Coupon bonds, 8%, due in U. S. in 1867	92,936 58	
Certificates of debt due in U. States, 1857	1,564 32	
Certificates of debt due in U. States, 1869	181,011 90	
Certificates of debt due in U. States, 1879	98,599 20	
		625,245 33
Debts due by Notes and Open Accts.:		
Dividends on common stock	$ 165,765 33	
Dividends on guaranteed stock	6,828 62	
Int. on certificates of debt	37,213 65	
Int. on bonds due in London	13,871 71	
Int. on bonds due in U. S. to English bondholders	52,315 20	
Debts due indls. and cos., open acct.	24,266 79	
Bills payable	17,370 65	
		317,631 95
Profit and Loss		332,823 45
		$2,418,600 73

By Mr. Holt:

Q. Now, Mr. Hillman, have you found the book relating to the Richmond & Danville Railroad Company that you referred to before recess?

A. Yes, sir, I have.

Q. Read its title to the stenographer, please.

A. Reports, R. & D. R. R., 1865 to 1871. The library mark is T. M. R. Talcott.

Q. Is that the book that came from North Carolina?

A. Yes, sir.

Q. Furnished, you said this morning by Mr. Howard; but by whom was it furnished to you?

A. By Mr. Hall. Mr. Howard had furnished another book and I had them tangled for the moment.

Q. Will you refer to the matter therein, giving the page upon which you based your statements concerning the Richmond & Danville road made before recess.

A. The trial balance of the Richmond & Danville road for September 30, 1865, shown on pages 22 and 23 of this volume, where both receipts and disbursements are carried out in Confederate currency and in National currency; also the trial balance of September 30, 1866, on pages 94 and 95 of the same volume, where the cost of the road, receipts, are shown and where all receipts are marked less Confederate currency reduced, the reduction being approximately fifty per cent., where the cost of road and property is also reduced by less Confederate currency; where the cost of transportation as carried on that trial balance is also reduced by less Confederate currency, and where the trial balance is carried forward from one year to the other with no reduction in the capital stock; no reduction in the funded debt shown, simply in the cost of road, in transportation and expense items, that is, the Confederate currency taken out, the road continues its business and has not gone into liquidation or disturbed any of its capital accounts.

The Master: Why don't you put in the figures of those two trial balances and then we will have them right before us? You need not bother to do that today.

Q. How many trial balances have you referred to?

A. Only two.

Q. What years?

A. September, 1865, and September 30, 1866.

Q. I thought you had 1871 in there.

A. That was on the other roads.

The Master: Make photographs of those two the same as Mr. Potter has of the others, and then whatever significance it is entitled to, we will have it before us.

Mr. Holt: With that understanding Mr. Hillman is going to leave his assistant here, Mr. Leeds, who will have those figures made.

[The exhibits from photographic copy, above referred to, appear in Volume II, Exhibits, marked "BB, 2 sheets," along with "Extract from Report of Richmond & Danville Railroad Company."]

By Mr. Holt:

Q. A while ago, as I recall, you stated in substance that certain railroad companies named by you passed out what I may call the Confederate regime into that of the Federal without a jar necessitating reorganization or anything of the kind, and based your conclusion to that effect if conclusion it were simply upon a book that you had obtained or to which your attention had been called found in what is known as the Virginia State Library. Take the book now handed you and state whether or not it is the one referred to. This book is entitled Third Annual Report of the President and Directors of the Atlantic, Mississippi & Ohio Railroad Company for the fiscal year ending September 30, 1873.

A. Yes, sir, this is the book. I was mistaken as to its source. It was the State Library and not the Memorial Library from which it was obtained.

Q. Is it the State Library?

A. Yes, sir.

Q. Will you turn to the pages of that book and the contents thereof upon which you based the conclusion just referred to.

A. Pages 16 and 17 of that report, which are headed Report of Treasurer for the Norfolk & Petersburg Division from organization to Termination of Fiscal Year ending September 30, 1873.

Q. Does that page cover the whole thing?

A. That covers the entire statement of the Norfolk & Petersburg.

Q. Go right along and explain how you arirved at your conclusion with respect to that road.

A. Under the liabilties of this road are the amounts of the capital stock which aggregate $1,798.800, on page 16 of this report. On page 45 of the blue prints, Defendant's Exhibit 6-A, 1863, the outstanding stock is given at $1,810,800, showing that the capital stock had not in these ten years increased. The Norfolk & Petersburg in 1863 showed a loss of $189,942.12. On page 16 of this report it showed a profit of $84,493.48.

Q. For what year?

A. For the year ending September 30, 1873, I mean from its organization up to that point.

Q. Does that mean that it had no surplus in 1863 but had a surplus in 1873?

A. Yes, and the same outstanding capital stock.

By the Master:

Q. You are reading from a trial balance?

A. Yes, sir.

Q. Why don't you put the trial balance right in?

A. I understand that is the intention, to have it copied the same as the Richmond & Danville was.

Q. State the next road if you are now through with that.

A. The next is on pages 188 and 189 of the same report, and is for the South Side Division, from its organization to the termination of the Fiscal year ending September 30, 1873. On the same page above mentioned of the blue prints—

The Master: If you put the exhibit, the trial balance, in that shows all these things, doesn't it, or do you want that stated in detail?

Mr. Holt: We wanted the question of surplus italicized.

The Master: You want it emphasized?

Mr. Holt: Yes.

A. (Continuing) On Defendant's Exhibit 6-A, 1863, blue print page 45, the stock outstanding of the South Side road

is carried as $1,362,900. On page 18 of the report of September 30, 1873, stock is shown $1,365,600, an increase of some $2,700 only. It is the same stock. The profits in 1863 were $84,471.88. In 1873 they are shown to be $527,791.86. On pages 20 and 21 of the Atlantic, Mississippi & Ohio report, September 30, 1873, is shown the report of the Treasurer for the Virginia & Tennessee division from its organization to the end of the fiscal year, September 30, 1863. In this the capital stock is show as being outstanding $3,506,300. On page 45, Defendant's Exhibit 6-A, 1863, we have the outstanding stock, $3,452,813.32. It is the same stock. On the blue print, page 45, we have a loan shown of $3,285.30.

Q. For the year 1863?

A. Yes, sir. On page 20 of this report, which is at the end of the fiscal year, September 30, 1873, there was a profit of $797,644.78. On pages 22 and 23 of the same report, September 30, 1873, we have the report of the Treasurer for the Virginia & Kentucky division from its organization to the the termination of the fiscal year, September 30, 1873, in each case they are called now divisions of the Atlantic, Mississippi & Ohio instead of separate roads. In this case there is no profiit shown on Defendant's Exhibit 6-A, 1863, page 45. The stock is shown as $82,000.61. On September 30, 1873, this report shows a total outstanding stock of $451,200, the first item of which is by Atlantic, Mississippi & Ohio Railroad Company purchased of the state of Virginia $103,400, which would serve to identify it with the $82,000.61 in character of stock which is mentioned upon page 45 of the blue prints. The loss on this stock up to September 30, 1873, is shown to be $25,-539.68. There was no profit or no loss shown upon Defendant's Exhibit 6-A, 1863, page 45, for the reason that at that time we had no data on the Virginia & Kentucky road. It is upon the examination of these figures that I made the general statement that these roads had passed from one regime or one set of currency to the other without being appreciably jarred in the final result.

By The Master:

Q. So far as the trial balances show?

A. Yes, sir.

The Master: Those trial balances all go in.

By Mr. Holt:

Q. How many pages of the trial balances are there?

A. Eight, four separate trial balances, two sheets each.

Q. It is understood that you will leave directions with your assistant, Mr. Leeds, to have those trial balances figures made.

The Master: Have them appear right in the record.

[These exhibits appear in Volume II, marked "AA, 4 sheets."]

By the Master:

Q. You have no knowledge of these conditions except what you derived from these trial balances?

A. None, sir, except what I derived from reports.

Q. What do you mean by reports, anything different than trial balances?

A. I meant from these trial balances.

The Master: The trial balances will go in the record so that we will have the same sources that you have. Is that all, Judge?

Mr. Holt: You gentlemen may examine.

CROSS EXAMINATION.

By Mr. Harrison:

Q. You have testified in respect to an entry which you speak of having discovered since your last examination of a trial balance of the R. F. & P. Railway which should have been entered on your schedule No. 5 for 1863 as U. S. instead of C. S. I want to get that straight on the record. State what items you referred to.

A. On the blue print, page No. 4, they are called certificates of debt due United States in 1857, $1,606.32; ditto due in 1869, $264,979.40; ditto due in 1879, $138,653.20. On page 5 of the blue prints these are entered as certificates of debt due

in C. S., in 1857, $1,564.32; due in 1869, $181,011.90; due in 1879, $98,599.20.

Q. Due by whom?

A. Due by the Richmond, Fredericksburg & Potomac road as part of its indebtedness.

Q. And they are shown on the liability side of your exhibit, are they?

A. Yes, sir.

Q. What significance has the change?

A. For the reason that we have here an exhibit which is showing C. S. when the conclusion is inevitable—

By The Master:

Q. What change do you want to make? Do you want to strike out the abbreviation C. S. in Exhibit 5, and put in its place U. S.?

A. No, sir.

Mr. Holt: He has made the explanation in the record this morning, your Honor, as I understand. It is correctly set down as taken from the balance sheet, but his conclusion is that where the balance sheet makes it as Confederate States it does it by mistake, because he finds the same item carried forward under U. S. certificates beginning in a year before the Confederacy was established.

The Master: I get the point. He has made a correct transcript of the trial balances, but his judgment is that the trial balance is erroneous in that regard.

Mr. Holt: Is mistaken on that item.

Mr. Harrison: But it has no significance whatever.

Mr. Holt: None whatever. I agreed with you on that sometime ago. If I had understood it in the beginning I would not have bothered myself to inquire about it.

Mr. Harrison: The Judge thought it was on the asset side. He did not know it was a debt due by the company; he thought it was one due to the company.

The Master: It is not an error of Mr. Hillman.

Mr. Holt: I wanted to explain that for your benefit, that there is nothing in it.

By Mr. Harrison:

Q. Now, you have testified again and given us a repetition of your conclusion based on what you call trial balances that you referred to, that the Richmond & Danville Railroad Company passed from Confederate time to the period immediately after the war without any embarrassment of its resources; is that what you meant to say?

A. No, sir; I did not say that.

Q. You did not mean to say that it suffered no loss by reason of the termination of the war?

A. No, sir.

Q. You did not mean to say that in respect to any of these roads about which you testified, did you?

A. No, sir.

Q. Do you know how much the bonded indebtedness created by the Richmond & Danville Railroad was between 1865 and 1872?

A. I do not know, I have not looked at it.

Q. And you do not wish to be understood by whatever conclusion or deduction you have drawn and stated that the assets of these companies suffered no loss or embarrassment by reason of the close of the war?

A. I do not wish to be so understood.

The Master: I suppose your question really means by reason of the operation of the war?

Mr. Harrison: I mean by reason of the operation of the war, I mean to say as a result of the war.

Q. Either you or Judge Holt, one or the other, defined what you mean by saying that the roads were likened to a man with rheumatism who got over the rheumatism in time; but you do not know what remedies were applied to relieve the roads of the rheumatism that they came out of the war with?

Mr. Holt: I added that they took no additional medicine.

Q. You do not know whether they had to take medicine or not to be relieved of the rheumatism that afflicted them when they emerged from the period of the war, do you?

A. No, sir; I do not know what they did save that they did not find it necessary to reorganize.

Q. You do not know what financial arrangements any of these roads made after the war?

A. No, sir, I do not.

Q. As of what date were you testifying in respect to the Norfolk & Petersburg and those roads, and the Virginia & Tennessee?

A. September 30, 1873, and September 30, 1863.

Q. On September 30, 1873, in the book that you find here and from which you have referred did you find any statement or balance sheet of the Atlantic, Mississippi & Ohio Railroad?

A. Yes, sir.

Q. Do you know of what roads that road was composed?

A. Yes, sir.

Q. What were they?

A. It was composed originally of the four roads which we have mentioned, the Virginia & Tennessee, Virginia & Kentucky, Norfolk & Petersburg and the South Side road.

Q. Then there had been a reorganization by September 30, 1873, of the four roads which you mentioned and their consolidation in the Atlantic, Mississippi & Ohio?

A. No, sir, there had not been a reorganization.

Q. What would you call it?

A. A consolidation.

Q. A consolidation and merger.

A. Yes, sir.

Q. Did you find that they were encumbered with any mortgages?

A. I did not look further than the statements of each of the separate units of the Atlantic, Mississippi & Ohio road.

Q. Can you state when the Atlantic, Mississippi & Ohio Railroad was formed and took over the roads which you have mentioned?

The Master: 1880, wasn't it?

The Witness: That is my recollection, sir.

Mr. Harrison: He is talking about a balance sheet of the Atlantic, Mississippi & Ohio now of September 30, 1873.

Mr. Anderson: It was chartered in 1870. We put the charter in.

The Witness: I should judge, your Honor, it was in 1870, because this is called the third annual report and it is dated in 1873. I will therefore say 1870, 1869-70.

Q. Now, in reference to the Richmond, Fredericksburg & Potomac Railroad, glancing over a memorandum on page 6 of your blue print exhibits for 1864, September 30th, the nearest period we have got to 1865, the close of the war, that shows investments by that road of $272,500 in Confederate cotton bonds. What became of them at the close of the war, if you know?

A. They have either been disposed of by sale, or have been written off the books of the company, and they do not appear on the next trial balance, September 30, 1865. I do not know what became of them.

Q. Do you make the same answer as to the $47,000 of Confederate State 8 per cent. registered bonds which the company appears to have included among its assets, September, 1864?

A. Yes, sir.

Q. And the same answer would apply as to the $40,725 of Confederate States cotton bonds in addition to the ones that I mentioned awhile ago?

A. Yes, sir.

Q. Those assets also include due from the Confederate States for transportation, $166,153.12 and $22,472.67 for reconstruction of bridges. Were these items collected or did they disappear at the next balance sheet?

A. I don't know, but my judgment would be that they had been written off and disappeared.

By the Master:

Q. You do not know anything about it except what you see from this trial balance sheet, do you?

A. Only from this trial balance and the next trial balance of the company.

Q. It simply appears on one and does not appear on the other, and that is all the information that the trial balances convey, and as to what happened, that is a matter of pure conjecture, isn't that right?

A. Yes, sir.

Mr. Harrison: We are through.

The Master: That is all of the cross-examination. Is there any re-direct?

Mr. Holt: Your Honor, we are pleased to be able to announce the conclusion upon our part.

The Master: We will assume that the preliminary proclamation has been made, whatever that may mean. Judge Holt says that they have concluded. Now, is there anything by way of re-rebuttal or rejoinder on the part of Virginia?

Mr. Harrison: We are through.

The Master: The only thing left as far as I know then is to determine on the time when this case shall be argued. Now, the suggestion made last night was that the briefs were to be printed and the case argued on he 7th of October, at the Bar Association in New York. Has any one any suggestion to make in relation to that this afternoon. That is as far as we got last night.

Mr. Holt: There is one question I would like to ask the gentlemen upon the other side, and that is whether in their briefs they expect to take up the question of interest.

Mr. Harrison: Yes, we do expect to present that question. It has already been covered very fully in our discussions. We intend to ask the Master to take that matter under consideration and report upon it.

Mr. Lilly: May I inquire of the Master what his opinion is as to whether or not he shall report on the question of interest, whether or not it has been referred to him?

The Master: Yes, you may make that inquiry, but in the absence of argument from either side I hardly would feel at liberty at this time to state my final conclusion. After the statement of Major Conrad the other day I do not know just in regard to that the position of Virginia might be; I have not examined it. I made an intimation when we had our preliminary meeting in New York. My first impression has been, without looking the thing over at all, that the item of interest was not submitted to me. Of course, as I said then I would have to say now, I would not want to conclude that if

the plaintiff in the case seriously insists upon it without hearing them fully upon that proposition. I do not say that my mind is made up on it.

Mr. Holt: I want to know whether these gentlemen expect to discuss the question of interest in their briefs. The only reason I made the inquiry was this, I suppose on account of the shortness of the time both sides here would just simply have to take the whole time in the preparation of their briefs and they will really not be able to furnish one to the other their briefs before we meet in New York.

The Master: I presume there may be difficulty in that respect.

Mr. Anderson: The trouble about the case is that the argument will be so related to the schedules and to the evidence that we cannot carry in our minds, that it is absolutely necessary to have the printed record before we commence to prepare our briefs. We cannot spend time getting up authorities.

The Master: Unless there is some hiatus in the arrangements you will have the printed record a week from Monday morning.

Mr. Anderson: It would seem to me from my experience in connection with this and other cases where we had very large records and a great many questions in detail and in general that two weeks for the preparation of this brief would not be a very long time, in fact I do not think it is any more than sufficient. If the counsel prepares the brief on one side or the other and does not do anything else he has to confer with his associates and he has to examine again and again the record and the authorities, and it takes a great deal of time to file such a brief as will have to be gotton up in this case. It will shorten the brief, we will write very much shorter briefs if we have ample time than if we have to write it in a hurry.

The Master: We will have the understanding that the case is set down for taking the testimony of Mr. Axtell and for argument at 10 o'clock in the morning on the 19th of October, in New York, at the Bar Association.

Adjourned to October 19, 1914, at 10 A. M. to meet at the Bar Association, New York.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1913.

No. 2, Original.

COMMONWEALTH OF VIRGINIA

vs.

THE STATE OF WEST VIRGINIA

In Equity.

BEFORE

HON. CHARLES E. LITTLEFIELD,

MASTER.

At Richmond, Virginia,

August 17-19 and September 2-12, 1914.

VOLUME II.

DEFENDANT'S AND PLAINTIFF'S EXHIBITS.

NOTE.—A pink insert sheet separates the index from "Defendant's Exhibits 1861"; a blue sheet separates "Defendant's Exhibits, 1861" from "Defendant's Exhibits, 1863"; a green sheet separates "Defendant's Exhibits, 1863" from "Defendant's Exhibits, (Miscellaneous) 1861-1863"; a yellow sheet separates all of the Defendant's exhibits from those of the Plaintiff.

ERRATA.

On Page 83, Sheet 7 of Defendant's Exhibit No. 12, January 1, 1861, make from the fourth to the eleventh items inclusive, under column "Amount," read "$26,320.50" instead of "$26,350.50."

Omit the last four items on the same page, being two payments from Bank of Virginia and two payments from Exchange Bank, they having been previously entered on same exhibit.

Change total on same page from "$2,485,116.41" to "$2,484,876.41," to accord with above corrections.

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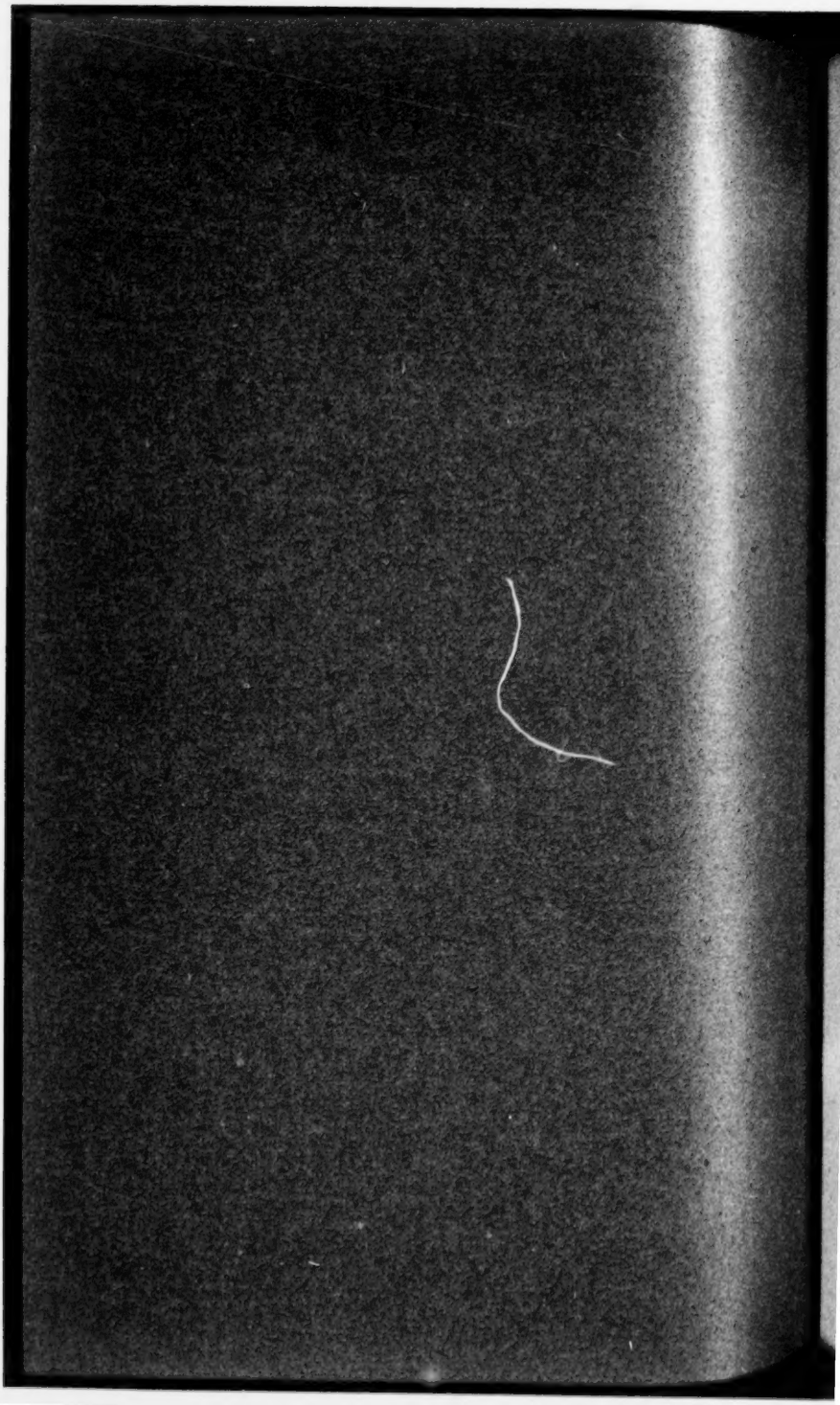
Schedules
Compiled and Prepared by
THE MUTUAL AUDIT CO.
LOUISVILLE, KY.



DEFENDANT'S EXHIBIT No. 1.

STATE OF WEST VIRGINIA.

Class A. (Exhibit, Hillman No. 1.)

Statement Showing Cash in Hands of the Treasurer of the Commonwealth of Virginia to the Credit of Various Funds January 1, 1861.

Literary Fund—			
(As shown page 69 Lit. Fund Ledger, Sept. 30, 1860)	$59,459 93		
Receipts, quarterly, ending 12-31-60, as follows:			
(Journal, page 60-2)	10,912 72		
(Journal, page 65)	6,064 82	$ 76,437 47	
Payments, quarterly, ending 12-31-60, as follows:			
(Journal, page 65)	$ 717 50		
(Journal, page 66)	46,053 48		
(Journal, page 69)	2,790 41	49,561 39	
Balance January 1, 1861		26,876 08	
Less Dawson Fund Cash		2,890 90	
Balance State Funds		23,985 18	
Board of Public Works—			
Page 247, Ledger "B," on file Second Auditor's Office)		5,958 28	
Commonwealth Fund—			
(Page 67, First Auditor's Ledger, in Account headed J. S. Calbert, Treas.)		252,842 67	
Sinking Fund—			
(Sinking Fund Ledger, No. 1 [1853-65], page 2 account headed J. S. Calvert, Treas)		819,250 03	
Total cash		$1,102,036 16	

DEFENDANT'S EXHIBIT No. 2.

Class B. (Exhibit, Hillman No. 2.)

STATE OF WEST VIRGINIA.

Statement showing holdings of the State of Virginia in the Richmond, Fredericksburg & Potomac R. R., January 1, 1861 *and their book values on the dates mentioned, no figures being obtainable for the exact date of January* 1, 1861.

Richmond, Fredericksburg and Potomac Stock—	Par $100	Value 1-1-61 Per Share	Value.
(Page 184, Ledger "B," 2d Auditor's Of.) 2752 shares...	$275,200 00	$150	$412,800 00

Following figures taken from official printed reports of the Railroad Company on file in the Treasurer's Office, Richmond, Va.:

Page of said record.	Date.	Outstanding Stock.	Surplus.	Book Value.
481	Mar. 31, 1859	$1,043,700 00	$461,134 54	144.2
495	Mar. 31, 1860	1,043,700 00	505,403 22	148.4
507	Mar. 31, 1861	1,116,100 00	562,819 05	150.4
521	Mar. 31, 1862	1,142,900 00	656,577 85	157.4

N. B.—Increase for year ending Mar. 31, 1861, was from 148.4 to 150.4, or 2%. Nine months to Jan. 1, 1861, would be ¾ of 2%, or 1.5%, which, added to 148.4, would give 149.9, or 150, as we have called it.

Dividends declared on R., F. & P. stock from 1850 to 1864 inclusive:

Year.	Amt. of Stock.	Paid in Cash.	Paid in Bonds.
1850	$1,000,000 00	7%	
1851	1,000,000 00	7%	
1852	1,000,000 00	7%	
1853	1,000,000 00	7%	
1854	1,000,000 00	3½%	3½%
1855	1,000,000 00		7%
1858	1,033,600 00		
1859	1,043,700 00		7%
1860	1,043,700 00		7%
1861	1,116,100 00	3½%	(Not paid until 1873)
1862	1,142,900 00	5½%	
1863	1,142,900 00	26½%	
1864	1,142,900 00	13%	

N. B.—All stock above $1,000,000 was guaranteed stock and paid 7% guarantee and participated in anything above that that the other stock earned.

Total dividends paid in 15 years as above 104½, or almost 7% per year.

DEFENDANT'S EXHIBIT No. 2. (Sheet 2.)

Subsheet 1. (Hillman, Exhibit 2.)

STATE OF WEST VIRGINIA.

Richmond, Fredericksburg and Potomac Railroad Company.

Trial-balance March 31, 1859.

Copied from Annual Report of R., F. & P. R. R. Co., 1852 to 1873, pp. 480-481.

Assets.

Cost of road and property:		
From Richmond to Acquia Creek	$1,531,238 40	
Net cost of new superstructure	471,093 01	
		$2,002,331 41
Engineering Expenses:		
Survey to Manassas and Quantico		2,321 87
Debts due to the Company:		
From individuals on new stock	1,820 00	
From bills receivable	62,763 77	
From sundries on open account	58,494 23	
		123,078 00
Investments:		
Stocks of this Company	1,000 00	
Potomac Steamboat Company's stock	27,800 00	
Potomac Steamboat Company's bonds	25,000 00	
		53,800 00

Liabilities.

Capital Stock:		
Subscribed by the State, 2,752 shares old stock.	$ 275,200 00	
Subscribed by individuals, 4,248 shares old stock.	424,800 00	
Subscribed by individuals, 3,000 shares new stock.	300,000 00	
Guaranteed stock	43,700 00	
		$1,043,709 00
Debts due the Company (of a permanent nature):		
Bonds due in London in 1860, 67,000 pounds sterling	324,005 61	
Bonds due in 1875 and convertible	23,000 00	
Certificates of debt issued for dividends and due 1857	29,486 32	
Certificates of debt issued for dividends and due 1869	265,784 40	
		642,276 33
Debts due on open account and notes:		
Debts due in open account	38,576 85	

CLASS B—1861.

DEFENDANT'S EXHIBIT No. 2—Sheet 2—Sub-sheet 1—(*Continued*)

Cash:		Unpaid dividends and interest on certificates of debt	26,551 35	
On hand 31st March, 1859.	45,120 24	Bills payable	14,412 45	
				79,540 65
Totals	$2,226,651 52	Profit and Loss:		
		Receipts from transportation, since commencement of the work to 31st March, 1859	4,628,520 13	
		Rents of real estate since commencement of the work to 31st March, 1859	5,885 62	
			$4,634,405 75	
		Expenses of transportation since commencement of the work to 31st March, 1859, including loss of bridges and depot by fire, interest, interest on new stock and certificates of debt and allowance to Washington & Fredericksburg Steamboat Company	3,216,654 77	
			$1,417,750 98	
		Dividends paid since the commencement of the work to 31st March, 1859	956,616 44	
				461,134 54
		Totals		$2,226,651 52

CLASS B—1861. [5]

DEFENDANT'S EXHIBIT No. 2. (Sheet 2.)

Subsheet 2. (Hillman, Exhibit 2.)

STATE OF WEST VIRGINIA.

Richmond, Fredericksburg and Potomac Railroad Company.

Trial-balance March 31st, 1860.

Copied from Annual Report of R., F. & P. R. R. Co., 1852 to 1873, pp. 494 and 495.

Assets.

Cost of Road and Property:		
From Richmond to Acquia Creek	$1,531,238 40	
Net cost of new superstructure	496,365 21	
		$2,027,603 61
Engineering Expenses:		
Survey to Manassas and Quantico		2,321 87
Debts due to the Company:		
From individuals on new stock	1,820 00	
From bills receivable	63,877 40	
From sundries on open account	84,863 20	
		150,560 60
Investments:		
Stock of this Company	1,000 00	

Liabilities.

Capital Stock:		
Subscribed by State, 2,752 shares old stock	$ 275,200 00	
Subscribed by individuals, 4,248 shares old stock.	424,800 00	
Subscribed by individuals, 3,000 shares new stock.	300,000 00	
Guaranteed stock	43,700 00	
		$1,043 700 00
Debts due by the Company (of a permanent nature):		
Bonds due in London in 1860	41,447 74	
Bonds due in London in 1875	52,000 00	
Bonds due in U. S. in 1875 and convertible	21,000 00	
Bonds due in U. S. in 1875 and convertible	172,800 00	
Certificates for debt issued for dividends and due in 1857, 1869 and 1879.	364,253 32	
		651,501 06

DEFENDANT'S EXHIBIT No. 2—Sheet 2—Sub-sheet 2—(*Continued*)

Potomac Steamboat stock..	27,800 00		Debts due by open account and notes:		
Potomac Steamboat Company's bonds	25,000 00		Debts due in open account	57,376 05	
		53,800 00	Unpaid dividends and interest on certificates of debt	7,132 45	
Cash:			Bills payable	14,950 53	
On hand 31st March, 1860..		45,777 23			79,459 03
Total		$2,280,063 31	Profit and Loss:		
			Receipts from transportation since the commencement of work to 31st March, 1860.....	4,916,470 07	
			Rents of real estate since commencement of work to March 31st, 1860	5,885 62	
					4,922,355 69
			Expense of transportation since commencement of work to 31st March, 1860, including loss of bridge and depot by fire, interest, interest on certificates of debt and new stock, and allowance to the Washington & Fredericksburg Steamboat Company	3,389,003 93	
				$1,533,351 76	
			Dividends paid since the commencement of work to 31st March, 1860..	1,027,948 54	
					505,403 22
					$2,280,063 31

DEFENDANT'S EXHIBIT No. 2. (Sheet 2.)

Subsheet 3. (Hillman, Exhibit 2.)

STATE OF WEST VIRGINIA.

Richmond, Fredericksburg and Potomac Railroad Company.

Trial-balance March 31st, 1861.

CLASS B—1861.

Assets.		
Cost of Road and Property:		
From Richmond to Acquia Creek	$1,531,238 40	
Cost of superstructure, heavy iron, etc.	530,583 13	
Engineering expenses to Manassas and Quantico	2,321 87	
Property conveyed to E. Robinson	147,046 50	
		$2,211,189 90
Debts due to the Company:		
From individuals on new stock	1,820 00	
From bills receivable	135,849 31	
From sundries in open account	27,695 59	
		165,364 90
Investments:		
Stock of this Company	4,009 00	
Potomac Steamboat Co. stock	38,900 00	
City of Richmond stock	2,304 98	
		45,213 98
Cash:		
On hand Mar. 31, 1861		19,875 09
		$2,441,643 87

Copied from Annual Reports, 1852 to 1873, pp. 506 and 507.

Liabilities.		
Capital Stock:		
Subscribed by the State, 2,752 shares old stock.	$ 275,200 00	
Subscribed by individuals:		
4,248 shares old stock.	424,800 00	
3,000 shares new stock	300,000 00	
1,161 shares gtd. stock	116,100 00	
		$1,116,100 00
Bonds, etc., due by the Company of a permanent nature:		
Coupon bonds due in London in 1875	57,333 33	
Coupon bonds due in U. S. in 1875	21,000 00	
Convertible bonds due in U. S. in 1875	172,800 00	
Certificates of debt due in U. S. in 1857	29,126 32	
Certificates of debt due in U. S. in 1869	265,217 40	
Certificates of debt due in U. S. in 1879	139,605 20	
		685,082 25
Debts due by the Company by open accounts and notes:		
Debts due in open account	45,023 66	
Unpaid interest, dividends, etc.	3,323 43	
Bills payable	29,295 48	
		77,642 57
Profit and Loss:		

DEFENDANT'S EXHIBIT No. 2—Sheet 2—Sub-sheet 3—(*Continued*)

Receipts from transportation from the commencement of the work to March 31, 1861...	5,199,678 34	
Rents of real estate since the commencement of work to Mar. 31, 1861.	6,060 62	
Petersburg Omnibus Account to Mar. 31, 1861.	5,435 83	
Dividends from the Potomac Steamboat Co. for the last six months..	33,360 00	
	$5,244,534 79	
Expenses of transportation since the commencement of work to Mar. 31, 1861, including loss of bridges and depot, interest, interest on certificates of debt and new stock, allowances to Washington and Fredericksburg Steamboat Co. and difference of exchange in settlement of bonds due in London in 1860.	3,582,435 10	
	$1,662,099 69	
Dividends paid since the commencement of the work to Mar. 31, 1861.	1,099,280 64	
		562,819 65
		$2,441,643 87

CLASS B—1861.

DEFENDANT'S EXHIBIT No. 2. (Sheet 2.)

Subsheet 4. (Hillman, Exhibit 2.)

STATE OF WEST VIRGINIA.

Richmond, Fredericksburg and Potomac Railroad Company.

Trial-balance March 31st, 1862.

Copied from Annual Reports, 1852 to 1873, pp. 520 and 521.

Assets.

Cost of Road and Property:		
From Richmond to Acquia Creek	$1,531,238 40	
Cost of superstructure, heavy iron, &c.	547,354 28	
Engineering expenses to Manassas and Quantico	2,321 87	
Property conveyed to E. Robinson	147,708 13	
		$2,228,622 68
Debts due to the Company:		
From individuals on stock.	1,820 00	

Capital Stock:		
Subscribed by the State, 2,752 shares old stock.	$ 275,200 00	
Subscribed by individuals, 4,248 shares old stock.	424,800 00	
Subscribed by individuals: 3,000 shares new stock	300,000 00	
Subscribed by individuals, 1,429 shares guaranteed stock	142,900 00	
		$1,142,900 00
Bonds, etc., due by the Railroad Company of a permanent nature:		
Coupon bonds due in London in 1875	57,333 33	
Coupon bonds due in Confederate States in 1875	21,000 00	
Convertible bonds due in Confederate States in 1875	172,800 00	

DEFENDANT'S EXHIBIT No. 2—Sheet 2—Sub-sheet 4—(*Continued*)

From sundries in open account	140,613 42	
From bills receivable	42,186 68	184,620 10
Investments:		
Seaboard and Roanoke Railroad stock ($25,000)	24,616 94	
Stock of this Company ($5,000 cost)	4,009 00	
City of Richmond stock ($2,300 cost)	2,304 98	
Potomac Steamboat stock	38,900 00	
Confederate States bonds	34,950 00	
Virginia Treasury Notes	25,000 00	129,780 92
Cash:		
On hand 31st March, 1862		23,308 01
		$2,566,331 71

Certificates of debt due in Confederate States in 1875	29,126 32	
Certificate of debt due in Confederate States in 1869	264,979 40	
Certificate of debt due in Confederate States in 1879	138,653 20	683,892 25
Debts due by the Company by open account and notes:		
Debts due in open account	35,101 00	
Unpaid dividends, interest, etc.	44,925 05	
Bills payable	2,935 56	82,961 61
Profit and Loss:		
Receipts from transportion from commencement of the work to 31st March, 1862	5,499,765 25	
Receipts of real estate from commencement of the work to 31st March 1862	6,135 62	
Petersburg omnibus account to 31st March, 1862	4,272 52	
Dividends from Potomac Steamboat Company	83,385 00	
Carried forward	$5,593,558 39	$1,909,753 86

DEFENDANT'S EXHIBIT No. 2. (Sheet 2.)

Subsheet 4. (Hillman, Exhibit 2.)

STATE OF WEST VIRGINIA.

Richmond, Fredericksburg and Potomac Railroad Company.

Trial-balance March 31st, 1862.

Copied from Annual Reports 1852 to 1873, pp. 520 and 521.

(Continued) Liabilities.

Brought Forward—		
Profit and Loss—Continued..	$5,593,558 39	$1,909,753 86
Expense of transportation since commencement of the work to 31st March, 1862, including loss of bridge and depot by fire, interest, interest on certificates of of debt and new stock, allowance to Washington and Fredericksburg Steamboat Company and difference of exchange in settlement of bonds due in London in 1860	3,768,385 20	
	$1,825,173 19	
Dividends paid since commencement of the work to 31st March, 1862	1,168,595 34	656,577 85
Totals		$2,566,331 71

CLASS B—1861.

*DEFENDANT'S EXHIBIT No. 3.

Class C.—1861.

Hillman Exhibit 3-A.

STATE OF WEST VIRGINIA.

Statement of Par and Value on opening of business January 1, 1861, on stock and loans as per Schedule "C."

		Par.	Book Value.	Value Jan. 1, 1861.	Disposed of For.
1. Orange & Alexandria R. R.	Stock	$ 874,500 00	$106 64	$ 932,566 80	$ 874,500 00
	Loan	398,670 60		398,670 60	398,670 60
2. Richmond & Danville R. R.	Stock	1,188,598 50	137 37	1,632,777 76	1,085,636 57
	Loan	565,803 34		565,803 34	438,900 00
3. Richmond & Petersburg R. R.	Stock	385,600 00	121 86	469,892 16	578,404 13
	Dividend Bonds	33,408 00		33,408 00	33,408 00
4. Virginia Central R. R.	Stock	1,891,670 68	131 16	2,481,115 26	231,458 58
		(Book $1,927,382 57)			
	Loan	90,032 82		90,032 82	90,032 82
	(Par plus int.)				
	Dividend Bonds	143,508 00		143,508 00	143,508 00
		1,604,723 23		1,604,723 23	625,348 08
5. Blue Ridge R. R.—Built by the State					
6. Alexandria, Loudoun & Hampshire R. R.	Stock	993,248 00		993,248 00	49,662 05
7. Winchester & Potomac R. R.	Loan	83,333 33		83,333 33	83,333 33
8. Virginia & Tennessee R. R.	Loan	1,000,000 00		1,000,000 00	886,685 00
9. South Side R. R.	Loan	800,000 00		800,000 00	Turned over to A. M. & O.
10. Norfolk & Petersburg R. R.	Loan	300,000 00		300,000 00	Turned over to A. M. & O. 137,000 00
11. Roanoke Navigation Co.	Stock	80,000 00		80,000 00	3,832 00

CLASS C—1861. [12-a]

DEFENDANT'S EXHIBIT No. 3.

(Continued)

12. Alexandria Canal Co.	Stock	272,000 00	272,000 00	764 47
13. Upper Appomattox Co.	Stock	56,500 00	56,500 00	16,144 26
14. Dismal Swamp Canal Co.	Stock	190,000 00	190,000 00	9,935 99
15. Loan to Washington College		2,000 00	2,000 00	2,000 00
16. Richmond Academy Bonds		400 00	400 00	400 00
17. Claim against U. S. Government		298,369 74	298,369 74	298,369 74
18. Claim against Selden, Withers & Co.			132,842 74	132,842 74
19. Rich'd, Fred'b'g & Potomac R. R.	Loan	149,984 00	149,984 00	149,984 00
20. Manassas Gap R. R.		2,105,000 00	2,105,000 00	
			$14,816,175 78	$6,270,820 36

*Corrected copy, superseding page 13 following.

DEFENDANT'S EXHIBIT No. 3.

Class C. (Hillman, Exhibit 3-A.)

STATE OF WEST VIRGINIA.

Statement of Par and Value on opening of Business January 1, 1861, *on stock and loans as per Schedule "C."*

		Par.	Book Value.	Value Jan. 1, 1861.
1.	Orange & Alexandria R. R. Stock—17490 shares @ $50....	$ 874,500 00	$106 64 (53.32)	$ 932,566 80
	Loan	398,670 60		*398,670 60
2.	Richmond & Dan. R. R. Stock—12000 shares @ $100 cost..	1,188,598 50	137 37	1,632,777 76
	Loan	565,803 34		*565,803 34
3.	Rich. & Petersb'g R. R. Stock—3856 shares @ $100 each..	385,600 00	121 86	469,892 16
	Dividend Bonds	33,408 00		*33,408 00
4.	Virginia Central R. R. Stock	1,891,670 68	Book— 131 16	2,481,115 26
	Loan (par plus interest)	90,032 82	(1,927,382 57)	90,032 82
	Dividend Bonds	143,508 00		143,508 00
5.	Blue Ridge R. R.—Built by the State	1,604,723 23		**625,348 08
6.	Alexandria, Loudoun & Hampshire R. R. Stock	993,248 00		**49,662 05
7.	Winchester & Potomac R. R. Loan	83,333 33		*83,333 33
8.	Virginia & Tennessee R. R. Loan	1,000,000 00		**886,685 00
9.	Southside Railroad Co. Loan	800,000 00		
10.	Norfolk and Petersburg R. R. Loan	300,000 00		***137,000 00
11.	Roanoke Navigation Co. Stock	80,000 00		**3,832 00
12.	Alexandria Canal Co. Stock	272,000 00		**764 47
13.	Upper Appomattox Co. Stock	56,500 00		**16,144 26
14.	Dismal Swamp Canal Co. Stock	190,000 00		**9,935 99
15.	Loan to Washington College	2,000 00		*2,000 00
16.	Richmond Academy Bonds	400 00		*400 00
17.	Claim against U. S. Government	298,369 74		*298,369 74
18.	Claim against Selden Withers Company			*132,842 74
19.	Richmond, Fredericksburg & Potomac R. R. Loan	149,984 00		*149,984 00
				$9,163,256 70

*Actual Value Jan. 1, 1861.
**Sales Value—Dates shown on 3-B and 4-B.
***Total Received—Dates shown on 3-B and 4-B.

DEFENDANT'S EXHIBIT No. 3—Asset 1.

Class C. (Hillman, Exhibit 3-A.)

STATE OF WEST VIRGINIA.

Statement showing Profit and Loss of the Orange & Alexandria Railroad Company to determine the value of said stock on opening of business January 1, 1861.

	Par of Stock.	Profit.	Add Profits.	Profits to Date.	Book Value.
1. Orange & Alexandria R. R. Co. Stock, September 30, 1856	$1,457,000 00	$ 7,571 28	Pages 946-7, Document 17, Report to State, 1856-7.	Trial-balance.	$100 45
After 1856 no trial balances are shown. Profits as shown on Document 17 are added to previous surplus to arrive at value. All information taken from Document 17 of the current year of the Auditor's report being the figures reported by the various roads. Document 17, 1857-8, does not show general balance sheet, so it has been necessary to add the profit of one year (as near as could be determined) to the profits of the preceding year. Book Value $100.34.					
1857—Stock	1,830,303 89				
Profits this year		$ 61,441 15			
Less Dividends on Preferred Stock		5,954 63			
			$ 55,486 52	$ 63,057 80	$103 44
1858—Stock	1,925,274 31				
Profits this year		34,016 74			
Less Dividends on Preferred Stock		2,138 71			
			31,878 03	94,895 83	104 93

DEFENDANT'S EXHIBIT No. 3. Asset 1.

(Continued)

1859—Stock	2,025,227 20				
Profits this year		19,035 67			
Less Dividends		6,658 35			
		12,377 32	107,272 15	105 30	
1860—Stock	2,039,603 73				
Profits this year		23,242 34	28,242 34	135,515 49	106 64
1861—Stock	2,058,007 07				
Profits this year		263,909 85			

(As reported by the superintendent, all records were in Alexandria, and as the war was on, he could only guess at the operating expenses; therefore, above statement is valueless. Earnings had increased 33% and his operating expenses $220,000. We therefore take the value of Sept. 30, 1860, as the measure of its value.)

CLASS C—1861.

DEFENDANT'S EXHIBIT No. 3. (Asset 1.)

STATE OF WEST VIRGINIA.

(Hillman Exhibits 3 & 4.)

Class C. Sheet 1.
Class D. Asset 1.

Settlement of the Orange & Alexandria R. R. Stock and Bonds.

	Cost.	Par as Per Settlement.	Disposed of For.
A. Stock—P. 183, Ledger "B," Internal Im'pt.	$872,802 83	$874,500 00	$874,500 00
Dividend, 1854, paid in 1864 (P. 157, Journal "D," Dept. Pub. Wks.) March 26, 1864. (P. 157, Journal "D," Dept. Pub. Wks.)—$34,912 doubtful. Sept. 8, 1864.			31,604 09
B. Loan—P. 241, Ledger "B," Internal Im'pt.	$400,000 00	$400,000 00	
Following details from pages 389-392, Journal "N," Pub. Wks.: (Internal Im'pt., now known as Pub. Wks.)			
Interest to Feb. 23/59..	$ 6,075 31		
Paid Feb. 11/59	5,250 00	825 31	
		$400,825 31	
Paid Feb. 23/59.....		2,154 71	
		$398,670 60	
Interest to Sept. 15, 1859.	$ 10,415 94		
Paid to Sept. 15, 1859...	9,086 61		
Unpaid interest...	1,329 33	1,329 33	
Interest to Apr. 17, 1860..	14,019 00		
Paid to Apr. 17, 1860....	9,840 47		
Unpaid interest ...		4,178 53	
Interest to July 1, 1860..	5,035 18		
Cash to July 1st.....	4,159 53		
		875 65	
Loan and over interest to July 1, 1860		$405,054 11	$405,054 11
Add int. on $398,670.60 for 6 months @ 7% per annum.—3½			13,953 47
Total due on loan int. 1/1/61			$419,007 58

Above three lines inserted to show amount due from Jan. 1, 1861, on loan.

DEFENDANT'S EXHIBIT No. 3. Asset 1.

(Hillman, Exhibit 3 & 4.)

Class C. Sheet 2.
Class D. Asset 1.

STATE OF WEST VIRGINIA.

Settlement of the Orange & Alexandria R. R. Stock & Bonds.

	Payments.	Charges.
Brought forward from Sheet 1		$405,054 11
Interest to October 20, 1862		$ 54,934 61
Paid October 20, 1862	$ 10,071 00	
Interest to October 25, 1862		327 67
Paid October 25, 1862	20,000 00	
Interest to November 15, 1862		1,376 23
Paid November 15, 1862	23,000	
Interest to December 29, 1862		2,321 02
Paid December 29, 1862	16,929 00	
Interest to January 28, 1863		2,474 51
Paid January 28, 1863	14,000 00	
Interest to June 23, 1863		9,284 50
Paid June 23, 1863	14,000 00	
Interest to January 16, 1864		12,823 56
Paid January 16, 1864	14,000 00	
Interest to September 8, 1864		14,604 90
Paid September 8, 1864	14,000 00	
Interest to December 31, 1864		7,072 78
Paid December 31, 1864	14,000 00	
Interest to January 1, 1865		60 86
Paid in State Bonds and Int.	150,037 73	
Interest to August 26, 1868		48,269 22
Paid August 26, 1868	20,000 00	
Interest to Nov. 1, 1868		2,420 23
Paid November 1, 1868, in State Bonds and Int.	38,141 53	
	$348,179 26	$561,024 20
Deduct payments		348,179 26
Balance of loan		$212,844 94

DEFENDANT'S EXHIBIT No. 3. Asset 1. (Sheet 3.)

(Hillman, Exhibit 3 & 4.)

Class C. Sheet 3.
Class D. Asset 1.

STATE OF WEST VIRGINIA.

Settlement of the Orange & Alexandria R. R. Stock & Bonds.

	Payments.	Charges.
Final Settlement of Loan and Stock, Pages 407-10, Journal N.:		
Balance of Loan		$ 212,844 94
Interest to March 29, 1872		43,510 92
Interest to October 17, 1872		7,050 11
Total loan to October 17, 1872		$263,405 97
No. 6	39,991 68	
October 28, 1872, State Bonds	834,398 88	
Interest on bonds	186,548 49	
Par of stock		874,500 00
Total outstanding loan and stock		$1,137,905 97
Paid as follows:		
Mar. 28, 1872, as 1/6 of above to Mar. 28, $1,130,855.86; bonds	$ 188,478 29*	
October 17, 1872, discount for anticipation of installments, page 180, Journal D:		
No. 2	$ 4,956 11	
No. 3	15,165 67	
No. 4	24,306 94	
No. 5	32,539 22	
	$1,137,906 99	

N. B.—$1.02 over, being 5c in discounts and an overpayment of 97c.
*Included in bonds turned in below.

DEFENDANT'S EXHIBIT No. 3. Asset 2.

(Hillman, Exhibit 3.)

Asset 2.

Class C.

STATE OF WEST VIRGINIA.

Statement showing Profit and Loss of the Richmond & Danville Railroad Company to determine the value of said stock on opening of business January 1, 1861.

	Par of Stock.	Profit.	Add Profits.	Profits to Date.	Book Value.
2. Richmond & Danville R. R. Co. Stock—					$110.00
1856	$1,975,040 00	$197,518 90			
1857—Stock	1,977,399 00				
Profits this year		139,489 12	$139,489 12	$337,008 02	117.04
1858—Stock	1,980,997 50				
Profits this year		154,305 76	154,305 76	491,313 78	124 80
1859—Stock	1,980,997 50				
Profits this year		182,527 84			
Less Dividends		79,239 90	103,287 94	594,601 72	1"0 02
1860—Stock	1,981,197 50				
Profits this year		225,068 98			
Less Dividends		79,247 90	145,821 08	740,422 80	137 37

* Pages 622-23, Document 17, Report to State, 1856-7. Trial-balance. See remarks in reference to trial-balance, under Orange & Alexandria Railroad.

CLASS C—1861.

DEFENDANT'S EXHIBIT No. 3. Asset 2. (Sheet 1.)

Class C. Asset C. 2.
Class D. Asset D. 2.

STATE OF WEST VIRGINIA.

Richmond and Danville Railroad.

A. STOCK—	Cost Price.	Disposed of For.
Ledger "B," Internal Improvement Fund, Folio 183, shows that on Jan. 1, 1861, the State owned stock in this company to the value of	$1,188,598 50	
This stock was disposed of as follows:		
Journal "N," Board of Public Works, on file in Corporation Commission Office, Folio 311:		
Dec. 13, 1870, first payment Old Registered Bonds		$ 58,200 00
Interest Funded Debt, Jan., 1866		13,377 41
Interest Funded Debt, Jan., 1867		18,583 00
Interest on above		9,915 37
Journal "N," Folio 348, Aug. 31, 1871:		
Coupon Bonds		38,500 00
Interest		12,705 00
Registered Stock		460,017 98
Interest		13,800 53
Registered Bonds, 1866		187,474 51
Interest		61,866 58
Registered B nds, 1867		126,424 95
Interest		34,134 74
FINAL PAYMENT—		
On decision of Circuit Court of Richmond, this company made final settlement for stock as follows:		
REFERENCE:		
Decree of Circuit Court of Richmond, April 13, 1877, to pay balance, amounting to $26,571.46, with interest from Aug. 31, 1871.		
Journal "O," Board Public Works, June 30, 1886:		
State Bonds		38,100 00
Coupons		691 50
Journal "O," Board Public Works, Dec. 20, 1886:		
State Bonds		11,500 00
Coupons		345 00
The same being $26,571.46 principal and $24,065.04 interest as per above decree.		
The principal and interest due on the preceding payment amounted to $11,771.42, and the excess, $73.58, was paid in order that the R. & D. could make the payment in bonds.		
		$1,085,636 57

DEFENDANT'S EXHIBIT No. 3. Asset 2. (Sheet 2.)
(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 2.
Class D. Asset D. 2.

STATE OF WEST VIRGINIA.

Richmond and Danville Railroad.

B. LOAN—		Value Jan. 1, 1861.
Ledger "B," Folio 240, Internal Improvement Fund, shows the value of this loan as of Jan. 1, 1861, to be.....	$ 600,000 00	
Due to the Partial Payment Plan by which this loan was computed, as shown by page 12 Senate Document and Journal No. 12, 1881 and 1882, its value on Sept. 30, 1860, was.....	567,786 54	
Following this plan, we arrive at a balance on Jan. 1, 1861, as follows:		
Interest from Sept. 30, 1860, to Jan. 1, 1861	8,516 80	
	$ 576,303 34	
Less one-fourth of annuity of $42,000.00.	10,500 00	
The value of this loan Jan. 1, 1861, was..		$ 565,803 34
Interest on same accrued Sept. 1st to Jan. 1st, 1861		10,500 00
This was paid Feb. 21st, 1861 (July to Jan., 6 mos.)		$ 576,303 34
Loan was finally disposed of as follows, having been reduced by the Partial Payment Plan used above, and including interest, to $438,900.00:		
Journal "N," Board Public Works, Folio 631, July 1, 1882—1st Payment—		
Coupon Bonds	$ 282,000 00	
Fractional Certificates	10,436 41	
Record Book, Sinking Fund, 2nd Auditor, Folio 285, July 8, 1884—		
Bonds	15,700 00	
Fractional Certificates	166 37	
Cash	55	
Journal "N," Board Public Works, Folio 632, Sept. 28, 1882—		
State Bonds	38,500 00	
Fractional Certificates	13 76	
Folio 635—		
Bonds	91,996 00	
Fractional Certificates	86 91	
	$ 438,900 00	

DEFENDANT'S EXHIBIT No. 3. Asset 3.

Class C.

(Hillman, Exhibit 3-A.)

STATE OF WEST VIRGINIA.

Statement showing Profit and Loss of the Richmond & Petersburg Railroad Company to determine the value of said stock on opening of business January 1, 1861.

CLASS C—1861.

	Par of Stock.	Profit.	Add Profits.	Profits to Date.	Book Value.
3. Richmond & Petersburg R. R. Co. Stock—					
1856	$ 786,100 00	$162,881 32	**		$127 20
1857—Stock	834,250 00				
Profits this year		28,601 86			
Less Dividends		48,205 00			
			*$ 19,603 14	$143,278 18	117 17
1858—Stock	835,750 00				
Profits this year		52,312 61			
Less Dividends		48,730 00			
			3,582 61	146,860 79	117 58
1859—Stock	835,750 00				
Profits this year		64,508 33			
Less Dividends		48,880 00			
			15,628 33	162,489 12	119 44
1860—Stock	835,750 00				
Profits this year		69,087 87			
Less Dividends		48,880 00			
			20,207 87	182,696 99	121 86

*Loss.

**Pages 746-7, Document 17, Report to State, 1856-7. Trial-balance.

DEFENDANT'S EXHIBIT No. 3. Asset 3. (Sheet 1.)

(Hillman, Exhibit 3 & 4.)

Class C.
Class D.

STATE OF WEST VIRGINIA.

Asset 3.
Sheet 1.

Richmond & Petersburg Railroad—Disposal of Securities of that Company owned by the Commonwealth of Virginia.

	Cost.	Par.	Settlement.	Payment.
A. Dividend Bond, page 24, Ledger "A," "Internal Improvement Fund"	$ 33,408 00	$ 33,408 00		
Paid Nov. 7, 1861, page 117, Journal "D," Internal Improvement Fund			$ 33,408 00	
B. Dividend on Stock—				
Dividend due Jan. 1, 1861, paid Feb. 28, 1861, page 82, Journal "D," Internal Improvement Fund			9,640 00	$ 43,048 00
C. Stock—Ledger "B," Int. Imp., Folio 184, Jan. 1, 1861	385,600 00			
C. Stock—				
Sold @ $150 and paid for as follows:				
(Pages 351-2, Journal "N," Internal Improvement Fund.)			$ 578,400 00	
Pa'd March 8, 1871				$ 100,000 00
Paid July 12, 1871				3,057 50
Interest on same to July 1, 1871				525 93
Paid July 13, 1871				384,172 20
Interest on same to July 1, 1871				46,165 65
Paid July 20, 1871				7,150 00
Paid August 4, 1871				21,278 00
Interest to July 1, 1871				449 45
Paid September 6, 1871				12,625 40
Paid September 6, 1871				*3,000 00
				$ 578,424 13
Total Bonds, Dividend & Stock				$ 621,472 13

*Balance due September 6, 1871, $2,995.87, was secured by State Bonds for $3,000.00, which were forfeited to the State, thus creating excess of $4.13—See Journal "N," page 351 and 352, Internal Improvement Fund.

CLASS C—1861.

DEFENDANT'S EXHIBIT No. 3. Asset 4.

Class C. (Hillman, Exhibit 3.)

STATE OF WEST VIRGINIA.

Statement showing Profit and Loss of the Virginia Central Railroad Company to determine the value of said stock on opening of business January 1, 1861.

CLASS C—1861.

	Par of Stock.	Profit.	Add Profits.	Profits to Date.	Book Value.
Virginia Central R. R. Co.—Stock—1856....	$3,000,988 15	$381,176 68	*		$112 70
1857—Stock	3,041,338 97				
Profits this year		178,632 72	178,632 72	559 809 40	118.40
1858—Stock	3,122,967 92				
Profits this year		158,030 15	158,030 15	717,839 55	122 99
1859—Stock	3,132,445 69				
Profits this year		280,591 86			
Less Dividends		127,246 07			
			153,345 79	871,185 34	127 81
1860—Stock	3,152,854 23				
Profits this year		267,681 51			
Less Dividends		153,304 46			
			114,377 05	985,562 39	131 16

*Pages 844-5, Document 17, Report to State, 1856-7. Trial-balance.

DEFENDANT'S EXHIBIT No. 3. Asset 4.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 4.

STATE OF WEST VIRGINIA.

Virginia Central Railroad—Stock.

A. STOCK—	Cost Price.	Disposed Of For:
Folio 185, Ledger "B," Internal Impv't. Fund, shows that on Jan. 1, 1861, the value of this Stock was	$1,927,382 57—95.7%	
Invested after Jan. 1, 1861, as follows:		
Journal "D" Internal Impv't.—		
Folio 91—Jan. 25, 1861	7,000 00	
Folio 91—Feb. 21, 1861	7,000 00	
Folio 91—Mar. 22, 1861	8,000 00	
Folio 102—Apr. 19, 1861	11,000 00	
Folio 141—Nov. 6, 1862	53,604 95	
	$2,013,987 52	

This stock was disposed of on various dates, and in quantities and prices shown below:

Journal "O" Board of Public Works—	
Folio 129—Aug. 15, 1888—17,622 39/100 shares	$ 25,500 00
Folio 157—Jan. 7, 1890—100 shares @ $26.75	2,675 00
Folio 157—Jan. 9, 1890—1,200 shares @ $26.75	32,100 00
Folio 157—Jan. 10, 1890—200 shares @ $26.75	5,350 00
Folio 157—Jan. 27, 1890—800 shares @ $26.75	21,400 00
Folio 158—Feb. 10, 1890—200 shares @ $25.00	5,000 00
Folio 158—Feb. 10, 1890—400 shares @ $24.75	9,900 00
Folio 158—Feb. 10, 1890—100 shares @ $24.50	2,450 00
Folio 158—Feb. 10, 1890—200 shares @ $24.37½	4,875 00
Folio 158—Feb. 10, 1890—300 shares @ $23.87½	7,162 50
Folio 158—Feb. 10, 1890—1,000 shares @ $23.75	23,750 00
Folio 158—Feb. 10, 1890—1,200 shares @ $23.50	28,200 00
Folio 158—Feb. 10, 1890—1,200 shares @ $23.75	28,500 00
Folio 158—Feb. 11, 1890—800 shares @ $23.75	19,000 00
Folio 158—Feb. 11, 1890—100 shares @ $23.62½	2,362 50
Folio 158—Feb. 11, 1890—411 shares @ $23.50	9,658 50
Folio 158—Feb. 11, 1890—200 shares @ $23.37½	4,675 00
Folio 158—Feb. 11, 1890—400 shares @ $23.25	9,300 00
Total.....26,433 39/100 shares	$ 241,858 50
95.7% equals	$ 231,458 58

The total amount received for the stock was received into the Treasury as per

Cash Book, 2d Auditor, Aug. 20, 1888	$ 25,500 00
Cash Book, 2d Auditor, Feb. 12, 1890	216,358 50
	$ 241,858 50

DEFENDANT'S EXHIBIT No. 3. Asset 4.
(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 4.
Asset D. 4.

STATE OF WEST VIRGINIA.
Virginia Central Railroad—Loan.

		Disposed of For.
B. LOAN.		
Folio 141, Ledger "B," Internal Improvement Fund, shows that on Jan. 1, 1861, the amount loaned this company was.....	$ 90,000 00	
Subsequent to Jan. 1, 1861, the State loaned this company $120,000.00, as follows:		
Folio 241, Ledger "B," Internal Improvement Fund—March 31, 1861	90,000 00	
Folio, 241, Ledger "B," Internal Improvement Fund—June 30, 1861	30,000 00	
Total amount of this loan.....	$210,000 00	
Interest which had accrued on above loan prior to Jan. 1, 1861, was received by the State of Virginia as set forth below:		
Cash Book No. 10, Board of Public Works, Second Auditor's Office—Jan. 2, 1861, semi-annual interest due 1/1/61 on 7% loan		$ 1,159 34
The above loan was bought by the Chesapeake & Ohio R. R. as shown by statement on file in File Room of Corporation Commission, who paid in bonds and interest..		210,076 60
Confirmation of sale and receipt of money is shown in the report of the Second Auditor for the year 1871.		
		$211,235 94
C. DIVIDEND BONDS.		
Folio 280, Ledger "B," Internal Improvement Fund, shows that on Jan. 1, 1861, the State owned dividend bonds of the Virginia Central R. R. to the value of.....	$143,508 00	
which were disposed of as follows:		
Sold to Chesapeake & Ohio R. R.:		
Cash Book, Sinking Fund (not paged), Jan. 17, 1863		$ 40,680 00
For redemption of Dividend Bond, dated Oct. 1, 1851		44,178 00
For redemption of Dividend Bond, dated July 1, 1855		58,650 00
File Box, Corporation Commission, Aug. 25, 1870.		
Before disposing of these bonds, the State received interest, which had accrued prior to Jan. 1, 1861, as follows:		
Cash Book No. 10, Board Public Works (not paged)—		
Jan. 19, 1861, interest on Dividen[illegible] Bonds due Jan. 1, 1861....		5,959 80
		$149,467 80

DEFENDANT'S EXHIBIT No. 3. (Asset 5.)

STATE OF WEST VIRGINIA.

(Hillman, Exhibit 3 & 4.)

Class C.

Asset C.5

Asset D.20

Blue Ridge Railroad.

(Built by the State of Virginia and sold April 1, 1870 to the Chesapeake & Ohio R. R. Co.

Cost of construction Jan. 1, 1861—
(Page 187 Ledger "B" Internal Im'pt. Fund) $1,604,723 23

Amount invested in road after Jan. 1, 1861, was $90,147.62, all of which was allowed to the Va. Central R. R., which was to do the work, as a credit on their toll account, and which amount was in addition to the tolls mentioned below.

Price obtained for the road—
(Journal "D" Internal Im'pt. Fund, P. 171)
Apl. 1, 1870 ..... $ 625,348 08

Paid as follows:

Bonds	$ 574,921 48	
Int. on same	8 96	
Check	8 96	
	$ 625,348 08	

Tolls were received as follows:
(Cash Book 9 Bd. Pub. Wks., Jan. 26, 1861)
From Va. Central for quarter ending 1/1/61. 1,534 69

$ 626,882 77

Subsequently there were received the following tolls from the Va. Central, which **may or may not** be considered as part of the purchase price. My judgment is **may not.**

May 29, 1861—Cash Book 9—B. P. W.—Qr. ending 1/31/61	704 19
July 25, 1861—Cash Book 9—B. P. W.—Qr. ending 6/30/61	1,082 64
Dec. 21, 1861—Cash Book 9—B. P. W.—Qr. ending 9/30/61	1,266 78
Mar. 4, 1862—Cash Book 9—B. P. W.—Qr. ending 1/1/62	1,584 06
July 23, 1862—Cash Book 9—B. P. W.—Qr. ending 3/31/62	1,245 98
Aug. 22, 1862—Cash Book 9—B. P. W.—Qr. ending 6/30/62	986 55
Nov. 6, 1862—Cash Book 9—B. P. W.—Qr. ending _____	1,501 55
Mar. 2, 1863—Cash Book 10—B. P. W.—Qr. ending 7/1/63	6,576 50
Mar. 31, 1864—Cash Book 10—B. P. W.—Year ending 12/31/63	64,984 49
	$ 79,932 74

DEFENDANT'S EXHIBIT No. 3. (Asset 6.)

STATE OF WEST VIRGINIA.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 6

Alexandria, Loudoun & Hampshire Railroad—Stock.

Stock—Jan. 1st, 1861 .....$	993,248.00=97.64%		
Ledger "B," P. 181 Internal Im'pt. Fund).			
Invested after Jan. 1st, 1861—			
Jan. 17, 1861—Journal "D," P. 90, Internal Im'pt. Fund.....	15,000 00		
Mar. 1, 1861—Journal "D," P. 90, Internal Im'pt. Fund.....	7,500 00		
Apl. 16, 1862—Journal "D," P. 131, Internal Im'pt. Fund....	1,500 00		
	$1,017,248 00		
Sold to road @ $5 per share, $50,862.40, paid in 3 notes of $16,954.13 each, dated Nov. 25, 1867, for 5, 7 and 10 years.....97.64% of	50,862 40		$ 49,662 05
Page 245, Board Pub. Wks. minutes—which notes were paid with interest as follows:			
May 17, 1872—P. 397, Journal "N"—B. P. W. .....$	1,500 00	1st Payment	
Mar. 19, 1873—P. 435, Journal "N"—B. P. W.	3,000 00	2nd Payment	
June 5, 1883—P. 641, Journal "N"—B. P. W.	65,188 71	3rd Payment	
	$ 69,688 71		

DEFENDANT'S EXHIBIT No. 3. Asset 7.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 7.
Class D. Asset D. 5.

STATE OF WEST VIRGINIA.

Winchester & Potomac R. R.—Loan and Interest on Same.

			Disposed of For.
A.	Loan— (Page 241, Ledger "B," Internal Im'pt. Fund)	$ 83,333 33	
B.	Interest on Loan— Cash Book Board Pub. Wks. No. 9 (not paged) shows payment of "annuity" (interest) year ending Nov. 1, 1861, of $5,000. Two months of this year, accruing in 1860, equals	833 33	
	Total	$ 84,166 66	
	This loan was disposed of as follows: Folio 175, Journal "D," Board Public Works, under Sept. 30, 1873, shows that the Treasurer of the Commonwealth received in full settlement of this loan		$ 83,333 33

DEFENDANT'S EXHIBIT No. 3. Asset 8. (Sheet 1.)

Hillman, Exhibit 3 & 4.

Class C. Asset C. 8.
Class D. Asset D. 7.

STATE OF WEST VIRGINIA.

Virginia & Tennessee R. R. Co. Statement of Loan and Interest on same which was unpaid Jan. 1, 1861, and subsequent payments thereon.

			Amount Due.
A.	Interest on loan of $1,000,000 (see settlement below), page 255, Ledger "B," Internal Im'pt. Fund, shows on Sept. 30, 1860 (N. B.—Postings are quarterly and the journal date of this entry is July 1, 1860.)		
	Debits to this Interest Account	$472,534 12	
	Add 6 mos. interest to Jan. 1, 1861	35,000 00	
	Total interest accrued to Jan. 1, 1861	$507,534 12	
	Same page shows payments on acct. of above interest, credits to interest acct.	227,534 12	
		$280,000 00	$280,000 00
	Same page of ledger has on Sept. 30/63 this acct. in balance $682,584.12 debts & credits showing that all arrearages of interest were paid. Evidenced also by the following payments of back interest:		
	Cash Book No. 9, Bd. Pub. Wks., Second Auditor's Office—		
	May 21, 1861	$ 6,000 00	
	May 23, 1861	10,000 00	
	June 3, 1861	10,000 00	
	June 26, 1861	7,952 00	
	July 9, 1861	1,653 57	
	Jan. 11, 1862	14,394 43	
	Cash Book No. 10, Bd. Pub. Wks., Second Auditor's Office—		
	Feb. 7, 1863	90,000 00	
	Mar. 5, 1863	50,000 00	
	May 14, 1863	55,000 00	
	Aug. 15, 1863	35,000 00	
			$280,000 00

DEFENDANT'S EXHIBIT No. 3. Asset 8. (Sheet 2.)

Hillman, Exhibit 3 & 4.

Class C. Asset C. 8.
Class D. Asset D. 7.

STATE OF WEST VIRGINIA.

Virginia & Tennessee R. R. Co.

		Disposed of for
B. Loan—Face Value.	$1,000,000 00	
(Page 240, Ledger "B," Internal Im'pt. Fund)		
Payments on above loan made as follows:		
Cash Book No. 10, Bd. Pub. Wks., June 19, 1863	200,000 00	
Cash Book, Sinking Fund (not paged)—		
June 30, 1863	300,000 00	
Aug. 6, 1863	100,000 00	
Aug. 7, 1863	100,000 00	
Sept. 11, 1863	186,685 00	$886,685 00

This loan was never paid in full, but the unpaid balance was turned over to the A. M. & O., together with the other items of the South Side R. R., Virginia & Kentucky R. R., and the Norfolk & Petersburg R. R. for $4,000,000. (See Hillman Exhibit 6, Class F.)

If this loan had been worked out on the "partial payment" plan, as loans that were eventually settled in full, West Virginia would be entitled to take into consideration $37,237.14 more. (See Assets, C. 8 and D. 7, Supplemental Answer.)

DEFENDANT'S EXHIBIT No. 3. Asset 8. (Class D.)

(Hillman, Exhibit 3 & 4.)

Class C.
Class D. Asset D. 8.

STATE OF WEST VIRGINIA.

South Side Railroad.

Interest on Loan due 1-1-61 *and paid subsequently.*

Folio 254, Ledger "B," Dept. Public Works, shows interest due on loan of $800,000 up to July 1, 1861		$ 441,487 69
Less six mos. interest, Jany. to July 1, 1861		28,000 00
Reducing interest to Jany 1, 1861		$ 413,487 69
Paid up to Sept., 1859 (last payment before Jary. 1, 1861) on acct.		148,987 69
Amt. Int. due Jan. 1, 1861		$ 264,500 00

All of which was subsequently paid as same page, same ledger, shows Sept. 30, 1863, the account balanced.

Cash Book No. 9, Board Public Works (not paged) shows payment of the above as follows:

Nov. 10, 1862	$ 12,500 00
Oct. 2, 1862	56,000 00

Cash Book No. 10, Board Public Works (not paged) shows payment of the above as follows:

July 29, 1863	56,000 00
Aug. 1, 1863	63,000 00
Aug. 8, 1863	28,000 00
Aug. 17, 1863	21,000 00
Sept. 16, 1863	28,000 00
	$ 264,500 00

The loan itself, Asset C 9, was never paid. It was turned over with the stock to the A. M. & O. R. R., with other roads for $4,000,000. See Hillman Exhibit 6, Class F, for the

Virginia & Tennessee R. R.
South Side R. R.
Virginia & Kentucky R. R.
Norfolk & Petersburg R. R.

If this loan had been figured on the "partial payment" plan that was used on loans that were eventually paid, W. Va. would be entitled to take $32,000 more into consideration. (See figures on Assets D-9 and C-8, in Supplemental answer.)

DEFENDANT'S EXHIBIT No. 3. Asset 10.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 10.

Class D. Asset D. 9.

STATE OF WEST VIRGINIA.

Norfolk & Petersburg Railroad—Stock and Loan.

		Amt. Rec'v'd
A. STOCK	$1,439,970 00	
(Page 182, Ledger "B," Internal Im'pt. Fund.)		
On Dec. 22, 1870, page 178 Journal "D," Im'pt. Fund, it was discovered that $300,000 of this amount was in shape of bonds or loans	300,000 00	
Leaving book value of stock	$1,139,970 00	
Consisting of the following shares, as shown on page 178, Journal "D," Internal Im'pt. Fund:		
8175 shares ordinary stock—par $100	$817,500 00	
825 shares guaranteed 6% stock—par $100 ..	82,500 00	
3000 shares preferred 7% stock—par $100 ...	300,000 00	
12000 shares TOTAL STOCK	$1,200,000 00	
Dividends paid on above guaranteed stock, $82,500; 3 years at 6 per cent., Jan. 1, 1859, to Jan. 1, 1862, page 117, Journal "D," Internal Im'pt. Fund; 2 years accrued up to Jan. 1, 1861, is		$ 9,900 00
Stock was included in sale of four roads already mentioned to the A. M. & O. R. R. (See Exhibit Hillman 6, to follow.)		
Interest on above-named Loan of $300,000, 4½ years, Jany. 1, 1859, to July 1, 1863, at 6%, Folio 158, Journal "D," Internal Im'pt. Fund, Paid Jan. 11, 1864, $94,500. Proportion to Jan. 1, 1861		36,000 00
B. LOAN.		
Page 179, Journal "D," Internal Im'pt. Fund shows in the settlement Dec. 22, 1870, when stocks and loans were turned over to the A. M. & O. that $163,000 of the $300,000 loan was yet outstanding, hence there must have been paid		137,000 00
		$ 182,900 00

DEFENDANT'S EXHIBIT No. 3. Asset 10.

(Continued)

N. B.—In a report to the Senate, Doc. 2, page 19-20, 1874-5, by John O. Stegar, and transmitted to Senate as an appendix to the Governor's message, there is shown to have been paid on this loan, $151,524.49, and the report further says that the book entries were missing and that he counted the bonds in many instances, and that report can be relied upon as very nearly, if not absolutely, accurate. I, also, am unable to locate any entries on this subject.

DEFENDANT'S EXHIBIT No. 3. Asset 11.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 11.

STATE OF WEST VIRGINIA.

Roanoke Navigation Company—Stock.

		Disposed of for
STOCK—		
(Ledger "B," page 193, Internal Imp'vt Fund..	$ 80,000 00	
Sept. 30, 1882, Day Book First Auditor, page 476. "Received from Roanoke Navigation Company on decree of court"		$ 3,332 00

DEFENDANT'S EXHIBIT No. 3. Asset 12.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 12.

STATE OF WEST VIRGINIA.

Alexandria Canal.

		Disposed of for
STOCK—		
Ledger "B," Internal Improvements, Folio 191, shows that on Jan. 1, 1861, the State owned stock in this canal to the value of—for 2720 shares	$ 272,000 00	
The stock was disposed of July 1, 1887, as shown below:		
Record Book, Sinking Fund, Folio 394, July 1, 1887—2720 shares sold as follows at 30 cts. per share:		
To City Council of Alexandria, 1220 shares....		$ 366 00
To George Mulbach, 100 shares		30 00
To Frank Hume, 600 shares		180 00
To H. H. Wells, 500 shares		150 00
To A. A. Berney, 100 shares		30 00
To Frank Agnew, 200 shares		60 00
Total, 2720 shares		$ 816 00
Less expense of sale for advertising, etc., as shown by same record		51 53
		$ 764 47
The Treasurer's Blotter for 1887-1888, Folio 5, shows the receipt July 1, 1887, on a/c this sale, of $816.00.		

DEFENDANT'S EXHIBIT No. 3. Asset 13.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 13.

STATE OF WEST VIRGINIA.

Upper Appomattox Company—Stock.

		Disposed of for
STOCK—	$ 56,500 00	
(Ledger "B," page 191, Internal Impv't Fund.)		
Cash Book Sinking Fund, p. 31, Feb. 24, 1875..		$ 3,000 00
Cash Book Sinking Fund, p. 48, Jan., 1881....		2,280 00
Record Book Sinking Fund, p. 286, July 8, 1884.		
Coupon Bonds		10,500 00
Registered Bonds		300.00
Fractional Certificates		64 26
		$ 16,144 26

DEFENDANT'S EXHIBIT No. 3. Asset 14.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 14.

STATE OF WEST VIRGINIA.

Dismal Swamp Canal.

Amounts collected after January 1, 1861.

STOCK— (Ledger "B," p. 191, Internal Im'pt. Fund.)		$ 190,000 00
Sold 760 shares, $250 each — $190,000.00 (Journal "N," Dept. Public Works, p. 238 and 241)		$ 9,935 99
N. B.—The $9,935.99 was invested in Virginia bonds as follows:		
Principal	$ 24,839 98	
Interest	5,961 59	
Total	$ 30,801 57	

which amount was turned over to the Sinking Fund July 31, 1874. (Page 207, Record Book of Sinking Fund.)

DEFENDANT'S EXHIBIT No. 3. Asset 15.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 15.
Class D. Asset D. 11.

STATE OF WEST VIRGINIA.

Loan to Washington College.

	Face Value.	Disposed of for
LOAN—		
On Jan. 1, 1861, the Ledger of the Literary Fund for that period, Folio 8, shows that there was a balance due the State of an original loan of $4,000.00 of	$ 2,000 00	
Interest on this loan which had accrued prior to Jan. 1, 1861, was paid and received by the State as follows:		
Cash Book No. 5, Literary Fund (not paged), March 29, 1861, on a/c Interest due Jan. 1, 1861		$ 60 00
This loan was redeemed Jan. 1, 1896, as set forth below:		
Cash Book No. 1, New Series, Literary Fund, Folio 238—Received of the President and Directors of Washington & Lee University (formerly Washington College), the balance of a loan of $4,000.00, made July 16, 1822, by the Board of the Literary Fund.....		2,000 00
	$ 2,000 00	$ 2,060 00

DEFENDANT'S EXHIBIT No. 3. Asset 16.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 16.
Class D. Asset D. 12.

STATE OF WEST VIRGINIA.

Richmond Academy.

	Face Value.	Disposed of for
BONDS—		
On Jan. 1, 1861, the Ledger of the Literary Fund for that period, Folio 11, shows that the State owned bonds to the value of....	$ 400 00	
Interest on these bonds, which had accrued prior to Jan. 1, 1861, was paid and received by the State as follows:		
Cash Book, No. 5, Literary Fund (not paged), July 9, 1861, on account 12 months' interest to July 1, 1861, $24.00, of which West Virginia is entitled to a proportion of one-half		$ 12 00
This bond was redeemed as set forth below:		
Cash Book, No. 1, New Series, Literary Fund, Folio 240, Feb. 5, 1896, received on account redemption 6% bond.....		400 00
		$ 412 00

DEFENDANT'S EXHIBIT No. 3. Asset 17.

(Hillman, Exhibit 3 & 4.)

Class C. Asset D. 13.
Class D. Asset C. 17.

STATE OF WEST VIRGINIA.

All figures in claim taken from file in vault of the Second Auditor's Office containing the original settlement papers, and confirmed by certified copy of record on file, Treasury Department U. S., Washington.

Principal of Loan by Va. to U. S. Government July 1st, 1814....	$ 298,369 74
Interest on same to Feb. 11th, 1894 (being 79 years, 7 months, 10 days @ 6%)	1,425,212 79
	$1,723,582 53
Payment was effected in 1903 as of date of Feb. 11th, 1894, as follows:	
Virginia bonds owned by the U. S., returned—Principal.....	$ 581,800 00
Chesapeake & Ohio Guaranteed Bonds—Principal.....	13,000 00
Interest on $594,800 from Jan. 1st, 1861, to Feb. 11th, 1894....	1,181,669 33
	$1,776,469 33
Less interest paid 1867-70, 4% on $581,800	69,816 00
	$1,706,653 33
Paid to the Restored State of Virginia (no date)	16,923 70
	$1,723,577 03
Cash paid Va. by the U. S., 1903, Bal. of Settlement.....	5 50
	$1,723,582 53
Value of Claim Jan. 1st, 1861—Principal.....	$ 298,369 74
Interest @ 6% July 1st, 1814, to Jan. 1st, 1861.....	832,451 57
Total	$1,130,821 31

DEFENDANT'S EXHIBIT No. 3. Asset 18.

(Hillman, Exhibit 3 & 4.)

Class C. Asset C. 18.

STATE OF WEST VIRGINIA.

Claim *vs.* Selden, Withers and Company.

Collections Made Subsequent to January 1, 1861.

Date.	Received from:	Reference.	Page.	Cash.
Apl. 26, 1866—	James Neeson	Treas. Cash Book	126	$ 500 00
June 23, " —	" "	" " "	166	4,674 60
July 11, " —	" " Atty., &c.	" " "	182	1,189 48
Dec. 7, " —	" "	" " "	26	2,212 00
Nov. 5, 1868—	" "	" " "	14	5,522 00
July 17, 1869—	" "	" " "	125	5,150 00
Apl. 27, 1871—	" "	" " "	195	5,000 00
June 3, "	—Sale Marietta & Cinn. R. R. Stock	B. P. W. Journal "N"	330	*8,036 49
July 6, "	—James Neeson	Treas. Cash Book	250	4,395 19
Sep. 13, "	—Sale Marietta & Cinn. R. R. Stock	B. P. W. Journal "N"	355	*11,871 30
Nov. 9, "	—a/c Sale Real Estate, St. Louis	Snkg. Fd. Cash Book	2	5,089 29
Nov. 18, "	—Sale Marietta & Cinn. R. R. Stock	B. P. W. Journal "N"	362	*8,211 91
Dec. 23, "	—a/c Sale Real Estate, St. Louis	Snkg. Fd. Cash Book	3	10,000 00
Mar. 6, 1872—	Sale Marietta & Cinn. R. R. Stock	" " " "	5	13,692 98
May 4, 1872—	James Neeson	" " " "	7	3,000 00
June 10, "	—a/c Sale Real Estate, St. Louis	" " " "	8	10,000 00
Dec. 4, "	—L. Turner	" " " "	13	1,600 00
Dec. 21, "	—A. Wyle, Trustee for Withers	" " " "	13	10,000 00
June 23, 1873—	James Neeson, Agent B. P. W.	" " " "	17	9,500 00
Sep. 24, " —	" " " State of Va.	" " " "	19	7,500 00

DEFENDANT'S EXHIBIT No. 3. Asset 18.

(Continued)

Feb. 20, 1875— " " " " " "	"	"	"	"	31	1,600 00	
May 13, 1887—Cash	"	"	"	"	58	1,286 00	
Nov. 26, 1889—Board Pub. Wks.	"	"	"	"	60	2,504 00	
Aug. 20, 1891— " " "	"	"	"	"	61	307 50	
							$ 132,842 74

*Note:

Cash received			132,842 74
Less cash received from proceeds of sale of Marietta & Cincinnati R. R. Co. Stock, viz.:	$ 8,036 49		
	11,871 30		
	8,211 91	28,119 70	
		$ 104,723 04	
Add par value Virginia State Bonds purchased with proceeds from sale of Marietta & Cinn. R. R. Co. Stock		47,300 00	
Total as per Asset "C 18"		$ 152,023 04	

Same report—Doc. 6, page No. 8—states: "The stock of the Marietta & Cincinnati R. R. Co. was obtained by the State from Selden, Withers & Company.

DEFENDANT'S EXHIBIT No. 3. (Asset 19.)

Hillman Exhibit 3 & 4

STATE OF WEST VIRGINIA.

Class C. Asset C. 19.
Class D. Asset D. 6.

Richmond, Fredericksburg & Potomac Railroad

Dividends, Interest and Loans due or on hand January 1. 1861, Paid Subsequently.

CLASS C—1861.

	Face Value.	
A. Dividend Certificates of Debt—		
Page 280, Ledger "B," Internal Improvement Fund	$ 149,984 00	
Paid as follows:		
March 13, 1863—Sinking Fund Cash Bk. 5 (not paged)		$ 27,520 00
July 1, 1863—Sinking Fund Cash Bk. 5 (not paged)		122,464 00
	$ 149,984 00	$ 149,984 00
B. Jan. 16, 1861. Interest due Jan. 1, 1861, on Dividend certificate of debt—		
Page 82, Journal D, "Int. Improvement Fund," 3% on $111,456.00	3,343 68	
Page 82, same Journal D, 6 months' interest on $28,896.00 @ 7%	1,011 36	
Same, 6 months' interest @ 7% on $9,632	112 37	4,467 41
Value of claim Jan. 1st, 1861		$ 154,451 41
Memo. Total as above	$ 154,451 41	
Add 1/3-2 months for a dividend of $9,632.00 due Jan. 1, 1861, not paid until Dec. 30, 1872, page 415, Journal N, Internal Improvement Fund. Included in payment of $17,806.68	3,210 66	
Making the total shown on "D"	$ 157,662 07	

DEFENDANT'S EXHIBIT No. 3. Asset 19.

(Continued)

If this is considered at all, there should be added to it on acct. of the following:		
Premium on $9,632 to equal gold	$ 481 60	
Int. on same, July 1/66 to Jan. 1/ 73	3,944 30	
	4,425 90	
Less costs of $250 (entire cost)	250 00	
1/3 of	$ 4,175 90	1,391 96
(As per judgment Circuit Court)		$ 159,054 03

N. B.—Since Exhibit 2 shows the value of the R., F. & P. Stock March 31, 1861, and the above "memo." items are included in that value, they are omitted from consideration in this exhibit.

DEFENDANT'S EXHIBIT No. 4.

Class D. (Hillman, Exhibit 4.)

STATE OF WEST VIRGINIA.

Recapitulation of Schedule "D" Assets.

Results of Revision of Schedule "D" by Hillman.

	Schedule "D." Details.	Total.
1. Orange & Alexandria R. R. Co. Stock.....$	31,604 09	
Orange & Alexandria R. R. Co. Loan....	20,336 98	
Orange & Alexandria R. R. Co. Overpaid..	1 02	$ 51,942 09
2. Richmond & Danville R. R. Stock.....		
Richmond & Danville R. R. Co. Loan....	10,500 00	10,500 00
3. Richmond & Petersburg R. R. Co. Stock...	*9,640 00	9,640 00
4. Virginia Central R. R. Co Stock.....		
Virginia Central R. R. Co. Loan.....	1,159 34	
Virginia Central R. R. Co. Dividend Bonds.	*5,959 80	7,119 14
5. Winchester & Potomac R. R. Co.	833 33	833 33
6. Richmond, Fredericksburg & Potomac R. R. (Dividend Certificate)	*4,467 41	4,467 41
7. Virginia & Tennessee R. R. Co. Loan.....	280,000 00	280,000 00
8. South Side Railroad Co. Loan	264,500 00	264,500 00
9. Norfolk & Petersburg R. R. Co. Stock.....	9,900 00	
Norfolk & Petersburg R. R. Co. Loan....	36,000 00	45,900 00
*Part of the amount mentioned as due in Class "D" was in form of dividend notes, which had been issued by the Company, and, therefore, appears in Class "C."		
10. James River & Kanawha Co.....	250 00	250 00
11. Loan to Washington College	60 00	60 00
12. Richmond Academy Bonds.....	12 00	12 00
13. Claim against U. S. Government	832,451 57	832,451 57
14. The Farmers' Bank of Virginia	33,691 00	33,691 00
15. Bank of Virginia	33,726 70	33,726 70
16. Bank of the Valley	16,936 50	16,936 50
17. Exchange Bank	30,642 50	30,642 50
18. Northwestern Bank	13,104 00	13,104 00
19. Fairmount Bank	1,500 00	1,500 00
20. Blue Ridge R. R., Tolls for use of	1,534 69	1,534 69
		$1,638,810 93

DEFENDANT'S EXHIBIT No. 4. Assets 14 to 19.

Class C. (Hillman, Exhibit 3 & 4.)
Class D. Assets D 14 to 19.

STATE OF WEST VIRGINIA.

Bank Dividends due January 1, 1861, *on Stock owned by the Commonwealth of Virginia and received subsequent to that date.*

1861—		
Jan. 7	Exchange Bank of Va., page 48, Treasurer's Cash Book KK	$ 29,708 00
Jan. 16	Bank of Virginia, page 52, Treasurer's Cash Book KK.	7,962 50
Jan. 18	Bank of the Valley, page 53, Treasurer's Cash Book KK	12,950 00
Feb. 4	Northwestern Bank of Va., page 73, Treasurer's Cash Book KK	10,213 00
Feb. 9	Farmers' Bank of Va., page 74, Treasurer's Cash Book KK	17,675 00
Jan. 7	Exchange Bank of Va., page 82, Journal D, Fund Internal Improvement	934 50
Jan. 10	Farmers' Bank of Va., page 82, Journal D, Fund Internal Improvement	12,327 00
Jan. 10	Bank of Virginia, page 82, Journal D, Fund Internal Improvement	20,567 75
Jan. 18	Bank of the Valley, page 82, Journal D, Fund Internal Improvement	3,664 50
Feb. 4	Northwestern Bank of Va., page 82, Journal D, Fund Internal Improvement	1,141 00
Jan. 10	Farmers' Bank of Va., Cash Book 5, Lit. Fund (not paged)	3,689 00
Jan. 10	Bank of Virginia, Cash Book 5, Lit. Fund (not paged)	5,196 45
Jan. 18	Bank of the Valley, Cash Book 5, Lit. Fund (not paged)	322 00
Jan. 5	Fairmount Bank, Cash Book 5, Lit. Fund (not paged)	1,500 00
Jan. 4	Northwestern Bank of Va., Cash Book 5, Lit. Fund (not paged)	1,750 00
		$129,600.70

DEFENDANT'S EXHIBIT No. 5. (Sheet 1.)

Class E. (Exhibit, Hillman No. 5.)

Statement showing ownership of stocks in various banks by the Commonwealth of Virginia January 1, 1861, and the value of the same as shown by Bank's Statements.

FARMERS' BANK OF VIRGINIA—Par, $100 per share	Par.	Value. Jan. 1st, 1861.	Less Div'd. Declared Jan. 1st, 1861.	Net Value.
Literary Fund, 1,054 shares (page 13, Lit. Fund Ledger)	$ 105,400 00			
Board Public Works, 3,522 shares (Page 320, Ledger "B," Second Auditor's office)	352,200 00	@ 115 07%	3-1/2%	111.57%
Commonwealthl Fund, 5,050 shares (page 50, Ledger 1861-4, Auditor's Office)	505,000 00			
Total—9,626 shares @ 100	$ 962,600 00	$1,107,663 82	$ 33,691 00	$1,073,972 82

Statement of Farmers Bank of Virginia, Jan. 1, 1861. Taken from printed report of officers (under oath) to State. Document 14, Annual report of Auditor for 1861—pages 14-15, Second Auditor.

Assets.		Liabilities.	
Debt outstanding	$5,764,680 74	Capital Stock	$3,150,900 00
Sterling Bills	5,375 84	Notes in circulation	1,532,578 06
Stocks	41,728 51	Deposits	1,931,138 51
Specie	416,120 40	Due other Banks	240,885 56
Notes other Va. Banks	583,276 20		
Notes outside Va. Banks	9,987 00		
Due from other banks	308,730 62		
Real Estate	193,696 46	Profit & Loss	337,067 05
In transitu	7,074 53	Profit of the inst'tution	138,101 18
	$7,330,670 30		$7,330,670 30

Profits, $475,168.23, show Book Value of 115.07 Jan. 1st, 1861.

Dividends declared 1856	per share (par)	8%
1857	"	8%
1858	"	7½%
1859	"	7½%
1860	"	7½%
1861	"	7½%
1862	"	7%
1863	"	7½%

Correction: Page 320 should be page 282.

DEFENDANT'S EXHIBIT No. 5. (Sheet 2.)

Class E. (Hillman, Exhibit No. 5.)

STATE OF WEST VIRGINIA.

CLASS E—1861.

BANK OF VIRGINIA—Par $70 per share.	Par.	Value per share Jan. 1st, 1861 (Dec. 31st, 1860)	Less Div'd. Declared Jan. 1st, 1861 per share.	Net Value per share.
Literary Fund, 2,121 shares (page 13, Lit. Fd. Ledger)	$ 148,470 00			
Board Public Works, 8,395 shares (page 319, Ledger "B," Second Auditor's Office)	587,650 00	$ 78 75	$ 2 45	$ 76 30
Commonwealth Fund, 3,250 shares (page 57, Journal KK, Treasr., shows payment of dividends, 3-1/2 declared, 1-1-61 on $227,500. The amount on Ledger covering this date has been erased, but it shows in both prior and subsequent ledgers.)	227,500 00			
Total—13,766 shares @ $70	$ 963,620 00	$1,084,072 50	$ 33,726 70	$1,050,345 80
Correction: Page 319 should be page 282.				

DEFENDANT'S EXHIBIT No. 5. (Sheet 2.)

(*Continued*)

Statement of Bank of Virginia, January 1, 1861. *Taken from printed report of officers (under oath). Page* 6, *Document* 14, *Annual Report of Auditor of State for* 1861. *On file Second Auditor's Office, Vol.* 2.

Total Outstanding Stock, 37,875 shares.

Assets.		Liabilities.	
Debt outstanding	$4,513,439 93	Capital Stock	$2,651,250 00
Stocks	64,721 30	Notes in circulation	1,058,228 83
Real Estate	178,555 33	Deposits	1,545,968 64
Specie	376,355 54	Due other Banks	188,296 51
Notes other Va. Banks	365,574 05		
Notes outside Va. Banks	9,217 00		
Due from other Banks	235,562 53		
Unredeemable—Stolen Notes	18,900 00	Profit & Loss	322,549 39
In transitu	13,653 62	Profits since Dec. 1st	9,685 93
	$5,775,979 30		$5,775,979 30

Profits, $332,235.32, show Book Value of Stock $1.125 on he dollar, $78.75 per share.

Dividends declared	1856—on par	8%	per share	$5.60
	1857	"	7½%	"	"	5.25
	1858	"	7¼%	"	"	5.075
	1859	"	7¼%	"	"	5.075
	1860	"	7¼%	"	"	5.075
	1861	"	7%	"	"	4.90
	1862	"	7%	"	"	4.90
	1863	"	5½%	"	"	3.675

Class E.

(Exhibit, Hillman No. 5.)

BANK OF THE VALLEY—Par, $100 per share.	Par.	Value Jan. 1st, 1861, @	Less Div'd Declared Jan. 1st, 1861	Net Value.
Literary Fund, 92 shares (page 14, Lit. Fd. Ledger)	$ 9,200 00			
Board Public Works, 1,047 shares (page 318, Ledger "B," Second Auditor's Office)	104,700 00	114.7%	3-1/2%	111.2
Commonwealth Fund, 3,700 shares (page 50, Ledger 1861-4, Auditor's Office)	370,000 00			
Total—4,839 shares @ $100	$ 483,900 00	$ 555,033 30	$ 16,936 50	$ 538,096 80

Statement of Bank of the Valley, January 1, 1861. *Taken from printed report of officers (under oath) to State. Document fourteen pages* 34-35, *Annual Report of Auditor,* 1861-2.

Assets.		Liabilities.	
Specie	$ 313,180 63	Capital Stock	$1,215,000 00
Notes—State Banks	33,161 92	Notes in circulation	1,176,990 50
Notes outside Banks	41,461 39	Due to other Banks	120,409 81
Due from other Banks	296,000 71	Discount	7,298 33
Notes Discounted	1,692,805 66	Deposits	210,988 13
Inland Bills Discounted	408,124 81		
Va. Treasury Notes	5,400 00		
Bond Accounts	29,212 06		
Real Estate	76,337 57		
Claim vs. Deceased Teller	13,522 12		
	$2,909,206 87	Profit & Surplus	178,520 10
			$2,909,206 87

Profits & Surplus, $178,520.10 show Book Value of 114.7, Jan. 1st, 1861.

Dividends declared 1856— 10%
1857 9%
1858 8%
1859 8%
1860 7½%
1861 6¾%
1862 4%
1863 4%

Correction: Page 318 should be page 282.

DEFENDANT'S EXHIBIT No. 5. (Sheet 4.)

Class E.

(Exhibit, Hillman No. 5.)

EXCHANGE BANK—Par, $100 per share.	Par.	Value Jan. 1st, 1861.	Less Div'd Declared Jan. 1st, 1861	Net Value.
Board of Public Works, 267 shares	$ 26,700 00	@		
(Page 316, Ledger "B," Second Auditor's Office)		110.9%	3.5%	107.4
Commonwealth Fund, 8,488 shares (page 50, Ledger 1861-4, Auditor's Office	848,800 00			
Total—8,755 shares @ $100	$ 875,500 00	$ 979,929 50	$ 30,642 50	$ 940,287 00
	Assets.		Liabilities.	

Statement of Exchange Bank, December 31, 1860. *Taken from printed report of officers (under oath) to State. Document* 14, *page* 22, *Annual Report of Auditor*, 1861-2.

Loans	$5,257,662 94	Capital Stock	$3,137,100 00
Va. & other State Sec.	90,936 56	Circulation	1,235,633 50
Foreign Bills of Exchange	21,999 08	Due other Banks	122,638 38
Due from Va. Banks	431,758 89	Deposits	1,689,635 46
Due from outside Banks	13,402 21	In transitu	9,137 36
Notes of other Banks	168,662 23		
Real Estate	179,381 12	Contingent Fund	191,584 24
Specie	372,511 96	Profits	150,586 05
	$6,536,314 99		$6,536,314 99

Contingent Fund (Reserve) and Profits, $342,170.29, show Book Value of 110.9 Jan. 1st, 1861 (close of business Dec. 31st. 1860).

Dividends declared 1856— 9%
1857 10%
1858 8%
1859 9%
1860 7½%
1861 7¼%
1862 7%
1863 8%

Correction: Page 316 should be page 282.

DEFENDANT'S EXHIBIT No. 5. (Sheet 5.)

(Exhibit, Hillman No. 5.)

Class E.

	Par	Value Jan. 1, 1861.	Less Div'd. Declared Jan. 1, 1861.	Net Value.
NORTH WESTERN BANK—Par $100 per share:				
Literary Fund, 500 shares	$ 50,000 00			
(Page 14, Lit. Fund Ledger)		@		
Board Public Works, 326 shares	32,600 00	111.9%	3½%	108.4%
(Page 317, Ledger "B," 2d Audr's Of.)				
Commonwealth Fund—2918 shares	291,800 00			
(Page 46, Ledger 1856-61, Auditor's Office, shows $400,000. No subsequent entries, item being left blank on next trial balance. Sinking Fund Journal, Feb. 27/57, shows sale of 1082 shares, and subsequent payment of dividends confirms.)				
Total—3744 shares. @ $100	$374,400 00	$418,953 60	$ 13,104 00	$405,849 60

CLASS E—1861.

Statement of Northwestern Bank, January 1, 1861. *Taken from printed report of officers (under oath) to State. Document* 14, *page* 40, *Auditor's Report* 1861-2. *(Copy of book on file Second Auditor's Office.)*

Assets.		Liabilities.	
Domestic Debt	$ 823,130 86	Capital Stock	$ 868,100 00
Bills of Exchange	728,243 37	Circulation	834,973 00
Stock of this Bank	29,000 00	Deposits	228,023 46
Other Stocks	27,012 53	Due other Banks	54,513 12
Banking House and Other Real Estate	145,869 92	In transitu	20,784 46

Correction.—Page 317 should be page 282.

DEFENDANT'S EXHIBIT No. 5. (Sheet 5.)

(Continued)

Due from other Banks and Branches....	102,321 21		
Notes of Virginia Banks	60,510 00		
Notes of other Banks, Checks and Ctfs..	31,939 43	Contingent I nd	63,732 96
Coin	162,216 09	Profits	40,116 41
	$2,110,243 41		$2,110,243 41

Contingent Fund and Profits, $103,849.37, show Book Value of 111.9 January 1, 1861.

Dividends declared—	
1856	10%
1857	5%
1858	7½%
1859	8%
1860	7½%
1861	
1862	
1863	

DEFENDANT'S EXHIBIT No. 5. (Sheet 6.)

(Hillman, Exhibit No. 5.)

Class E.

	Par	Value Jan. 1, 1861. @ 106.87%	Less Div'd. Declared Jan. 1, 1861. 3%	Net Value. 103.87%
FAIRMOUNT BANK—Par $100 per share:				
Literary Fund—500 shares (Page 42, Lit. Fund Ledger)	$ 50,000 00	$ 53,435 00	$ 1,500 00	$ 51,935 00
Total—500 shares @ $100				

Statement of Fairmount Bank, January 1, 1861. *Taken from printed report of officers (under oath) to State. Document* 14, *page* 156, *Auditor's Report*, 1860-61. *(Copy of book on file Second Auditor's Office.*

Assets.		Liabilities.	
Stocks	$ 61,750 00	Capital Stock	$107,950 00
Real Estate	4,027 84	Circulation	123,350 00
Notes and Bills Discounted	153,327 02	Unclaimed Dividends	706 00
Due from Bank	977 79	Due to Banks	5,960 81
Specie	27,491 38	Due Depositors	7,198 76
Notes of Virginia Banks	3,490 00		
Notes and Checks outside Banks	1,520 00	Surplus Fund	7,418 46
	$252,584 03		$252,584 03

Profits, $7,418.46, show Book Value of 106.87 January 1, 1861.
Dividends declared—1860 4½%

DEFENDANT'S EXHIBIT No. 6.

Class F. (Hillman, Exhibit 6.)

STATE OF WEST VIRGINIA.

Sale of various Stocks and Loans to the Atlantic, Mississippi & Ohio R. R.

Pages 178-179, Journal "D," Internal Improvement Fund, show this sale in the following detail of the stocks and loans transferred to this road for the $4,000,000 Second Mortgage on the A. M. & O. R. R.:

	Stocks—	
I.	8,175 shares Norfolk & Petersburg R. R. Stock.....	$ 817,500 00
II.	825 shares Norfolk & Petersburg Gt'd. Stock.....	82,500 00
III.	3,000 shares Norfolk & Petersburg Pf'd. Stock.....	300,000 00
IV.	8,035 shares South Side R. R. Stock	803,500 00
V.	17,168 shares Virginia & Tennessee R. R. Stock	1,716,800 00
VI.	832 shares Virginia & Tennessee Gt'd. Stock	83,200 00
VII.	5,000 shares Virginia & Tennessee Pf'd. Stock	500,000 00
VIII.	1,034 shares Virginia & Kentucky R. R. Stock	103,400 00
	Bonds & Notes as follows:	
I.	Note of the Norfolk & Petersburg R. R. for interest due and unpaid on loan of $300,000	13,271 41
II.	Note of the N. & P. R. R. for interest accrued and unpaid on July 1, 1870, on 825 shares guaranteed stock.....	27,225 00
III.	Unpaid balance of principal of the $300,000 loan.....	163,000 00
IV.	All claim the State may have vs. The South Side R. R. on account of the principal and interest due upon the loan of $800,000	
V.	Registered Certificate of the Va. & Tenn. R. R. Company, being for interest unpaid on 832 shares of Va. & Tenn. Ct'd. Stock up to July 1, 1870	79,040 00
VI.	All claims, rights and privileges which belong to the State of Virginia on account of loan of $1,000,000.....	
	For all of the above is charged against the Atlantic, Mississippi & Ohio R. R. $4,000,000 00	

That the above was a second mortgage for this amount and not a charge against the road is evidenced by the above pages in the preamble to entry, and by the first general balance sheet of the A. M. & O. R. R. Company, Sept. 30, 1871, on file in comptroller's office of the Norfolk & Western R. R. Company at Roanoke, Va., and examined by Mr. Parsons of Mr. Hillman's force, wherein the item "Second Mortgage to the State of Virginia," $4,000,000.00, is shown in liabilities.

DEFENDANT'S EXHIBIT No. 6-A.

(Hillman, Exhibit 6-A.)

STATE OF WEST VIRGINIA.

Statement showing the book value of securities listed under Class "F" at nearest determinable date to January 1, 1861.

CLASS F—1861.

	Par.	Profits.	Book Value.	Date.
Virginia & Tennessee R. R. Co. Stock	$3,452,813 32	*$ 3,285 30	$ 99 90	6/30-60
Profit	1,362,900 00	81,471 88	105 98	9/30-61
Southside Railroad Co. Stock			Par 100 00	
Profit	82,000 61			
Virginia & Kentucky Railroad Co. Stock				
Profit	1,810,800 00	*189,942 12	89 52	3/31-61
Norfolk & Petersburg R. R. Co. Stock				
Profit				

*Loss

	Par.	Book Value.	Value. Jan. 1, 1861.
Virginia & Tennessee R. R. Co. Stock	$2,270,525 00	$ 99 90	$2,268,254 48
Southside Railroad Co. Stock	803,500 00	105 98	851,549 30
Loan	800,000 00		No claim—too indeterminate
Virginia & Kentucky R. R. Co. Stock	82,000 61	100 00	82,000 61 Par
Norfolk & Petersburg R. R. Co. Stock	1,200,000 00	89 52	1,074,240 00
Loan	300,000 00		No claim—too indeterminate
			$4,276,044 39

DEFENDANT'S EXHIBIT No. 7. (Sheet 1.)

(Hillman, Exhibit 7.)

Class G. Asset 1.

STATE OF WEST VIRGINIA.

James River & Kanawha Canal Company.

Statement of value of this property as it was absorbed and and capitalized by the Richmond & Alleghany Railroad.

1. First general balance sheet of the Richmond & Alleghany R. R., on file in the office of the Vice President of the Chesapeake & Ohio R. R., in the city of Richmond, shows, on page 11, amongst the assets of the Company the following entries, which, for convenience in this sheet, have been numbered—

1. J. R. & K. Co. & Buchanan & Clifton Forge R. R. Co. Liens with Trustee First Mortgage	$1,393,637 66
2. Franchises and right of way	5,588,609 76
3. Richmond Docks	1,000,000 00
Total	$7,982,247 42

Notes:

1. The liens on the James River & Kanawha assumed by the R. & A. amount to $1,394,026.00, as shown on detail of deed by which the property is transferred to the R. & A. It is, therefore, probable that that amount was all on account of the James River & Kanawha $1,393,637 66

2. Franchises and right of way—The distance from Richmond to Clifton Forge was 230.5 miles. I am informed at the C. & O. office that the distance has not been appreciably changed since that date, also that the distance from Buchanan to Clifton Forge is about 33 miles. Allowing that the Richmond dock property cut off the distance, say, 5 miles, we would have on a mileage basis approximately 85%. The report above referred to says, on page 5, "Acquired the property of the James River & Kanawha and the Buchanan and Clifton Forge R. R. at a cost in stock and bonds of $6,389,511.93, thus securing legal right of way for its railway lines, basin and docks in Richmond, and other property, including liens of

DEFENDANT'S EXHIBIT No. 7. Sheet 1.

(*Continued*)

$1,53[illegible],381.42. The Company, same page, same report, says it also expended $199,097.83 for "further right of way," making total right of way $6,588,609.76, $1,000,000 of which has been arbitrarily assigned to Richmond Docks and Basin, leaving the charge to Right of Way $5,588,609.76, as above. We proportion on the 85% the $5,389,511.93, giving us as the James River & Kanawha Canal proportion	4,581,085 14
3. Richmond Docks and Basin must be acquired in entirety from the James River & Kanawha	1,000,000 00
	$6,974,722 80
Deducting liabilities assumed on account of liens	1,537,381 42
	$5,437,341 38

This report, on page 11, says "From Buchanan to Williamson Road was built on the unfinished work of the Buchanan & Clifton Forge R. R.," and "Experience with the Maintenance of Track on the towpath has fully sustained the expectations of those who asserted its advantages as a road bed."

DEFENDANT'S EXHIBIT No. 7. Sheet 2.

(Hillman, Exhibit 7.)

Class G. Asset 1.

STATE OF WEST VIRGINIA.

James River & Kanawha Canal Company.

(Continued)

In. Second annual balance sheet of the Richmond & Alleghany R. R., 1882, shows September 30th that the "Right of Way," etc., was	$5,446,662 00	
If from this we deduct the amount expended as above	199,097 83	
We have left for the James River & Kanawha property	$5,247,564 17	
85% of which is		$4,410,429 54
Add the Richmond Docks		1,000,000 00
and we have a value of the James River & Kanawha property on the R. & A. Second Annual Report of		$5,410,429 54

The Richmond & Alleghany has in this balance sheet set up the "Manchester Water Power" for $197,277.00, which possibly may account for the smaller amount assigned directly to the Right of Way as above.

DEFENDANT'S EXHIBIT No. 7-A.

Class G. (Hillman, Exhibit 8.)

STATE OF WEST VIRGINIA.

Manassas Gap Railroad Company.

Total cost of Road, Equipment, etc., according to Board of Public Works' Report, Document 17, Folio 218, was in 1860 ..... $3,322,164 67

Stock paid up to that date was $3,188,312 97

The Road was not operated at that time and no other value than the above is obtainable. In 1869 the State gave its stock in this Road to the Orange & Alexandria Road, formihg the Orange, Alexandria & Manassas Railroad, condition being that share of new stock should be issued to all outside holders of old.

Folio 184, Ledger "B," Internal Improvement Fund, shows that on June 1, 1861, the State of Virginia held stock of this road to the value of $2,105.000.

DEFENDANT'S EXHIBIT No. 7-B.

Class G.
(excepting Assets No. 51-52.)

(Hillman, Exhibit 9.)

STATE OF WEST VIRGINIA.

Statement of Stocks in and Claims against Internal Improvement Companies held by the Commonwealth on August 17, 1914.

Asset No.	Name of Co.	How disposed of.	Par value or cost to Jan. 1, 1861.			
3.	Roanoke Valley R. R.	Given away	$ 177,402 00		Act of Genl. Assembly, Feb. 18, 1866—Pages 333-334.	
	Roanoke Valley R. R.	Given away	*130,000 00			
4.	Fredericksburg & Gordonsville R. R.	On hand	132,399 00	$132,399 00	B. P. W. Ledger "B," page 181	$ 163,299 00
5.	Richmond & York River R. R.	Sold	290,999 52	179,500 00	B. P. W. Ledger "B," page 192	179,500 00
	Richmond & York River R. R.	Sold	*200,000 00		Decree of Ch. Ct. Dec. 16/72 Decree of Ch. Ct. Dec. 16/72	
6.	Rappahannock Co	On hand	179,500 00	179,500 00	B. P. W. Ledger "B," page 192	179,500 00
7.	Rivanna River Navigation Co.	On hand	227,133 00	227,133 00	B. P. W. Ledger "B," page 193 Journal "D," page 176	269,133 14
8.	Smith's River Navigation Co.	Abandoned	4,083 12		Journal "D," B. P. W., page 176	

DEFENDANT'S EXHIBIT No. 7-B.

(Continued)

				Journal "D," B. P. W., page 176	
9 Slate River Co.	Abandoned	21,000 00			13,650 00
10. Kempsville Canal Co.	On hand	13,650 00	13,650 00	B. P. W. Ledger "B," page 193	
11. Hazel River Navigation Co.	On hand	63,079 58	63,079 58	B. P. W. Ledger "B," page 192	63,079 58
12. Goose Creek & Little River Navigation Co.	On hand	58,255 35	58,255 35	B. P. W. Ledger "B," page 191	58,255 35
13. Dragon Swamp Navigation Co.	Abandoned	1,464 00		B. P. W. Journal "D," page 176	
14. Chesapeake & Ohio Canal Co.	On hand	250,000 00	250,000 00	B. P. W. Journal "D," page 176	250,000 00
Potomac Co.	On hand	31,111 11	31,111 11	B. P. W. Ledger "B," page 191	31,111 11
		$1,780,076 68	$955,128 04	(See note below)	$1,028,028 18

None of the securities representing the total $1,028,028.18 have been inspected by us.
•Preferred stock.

DEFENDANT'S EXHIBIT No. 4—Asset D-10.

Hillman Exhibit 3 & 4.

Class D. Asset D. 10.

STATE OF WEST VIRGINIA.

Kanawha Board of the James River and Kanawha Company.

	Book Value.	Amount Due.
The Treasurer's Blotter, Jan. 4, 1861 (not paged), shows the receipt of an interest item of $250.00 from the Kanawha Board of the J. R. & K. Co.....	$250 00	
This is a partial payment of interest on a loan of $100,000.00 to the above company made by the State of Virginia, and which was due Jan. 1, 1861..		$250 00

DEFENDANT'S EXHIBIT No. 10.

Hillman Exhibit No. 10.

STATE OF WEST VIRGINIA.

Amount of Taxes, Fines, &c., Paid by West Virginia Counties to the State of Virginia after June 20, 1863.

	Period June 20,1863, to April 1. 1865.
General taxes assessed after January 1, 1861	$189,643 31
Law processes assessed after January 1, 1861	936 19
Law processes assessed prior to January 1, 1861	1,158 13
General taxes assessed prior to January 1, 1861	22,715 93
License taxes of May, 1861	1,231 33
Lands redeemed	552 49
Delinquent taxes	351 95
Delinquent taxes and forfeited lands	8,210 30
	$224,799 63

Note.—The amount of taxes, period after June 20, 1863, was entered as $225,078.06 in supplemental answer filed in this cause.

*DEFENDANT'S EXHIBIT No. 11.

STATE OF WEST VIRGINIA.

Summary of Claims of West Virginia for consideration in settlement of Debt as set up in Hillman Exhibits, January 1, 1861.

	Value as shown by West Va.	
Class A—Exhibit 1	$ 1,102,036 16	
Class B—Exhibit 2	412,800 00	
Class C—Exhibit 3	12,711,175 78	
Class D—Exhibit 4	1,638,810 93	
Class E—Exhibit 5	4,060,487 82	
Class F—Exhibit 6	4,276,044 39	
Class G—Exhibit 7	5,410,429 54	
Class G—Exhibit 8	2,105,000 00	
Class G—Exhibit 9		
Total	$31,716,784 62	
23½% of above being West Virginia's proportion		$7,453,444 39
Taxes paid by West Virginia as per Exhibit No. 10		224,799 63
Total West Virginia claim		$7,678,244 02

*Corrected copy, superseding page 66-a, following.

SUMMARY OF CLAIMS.

DEFENDANT'S EXHIBIT No. 11.

STATE OF WEST VIRGINIA.

Summary of Claims of West Virginia for consideration in settlement of Debt as set up in Hillman Exhibits, Jan. 1, 1861.

Class A—Exhibit 1	$ 1,102,036 16	
Class B—Exhibit 2	412,800 00	
Class C—Exhibit 3-A	9,163,256 70	
Class D—Exhibit 4-B	1,638,810 93	
Class E—Exhibit 5	4,160,487 82	
Class F—Exhibit 6	4,276,044 39	—Only partial—Indeterminate left out.
Class G—Exhibit 7	5,410,429 54	
West Virginia's proportion, based on 23.5%	$26,063,865 54	=$ 6,125,008 40
Taxes paid by West Va. as per Exhibit No. 10		224,799 63
Total claim		$ 6,349,808 03

DEFENDANT'S EXHIBIT No. 12

STATE OF WEST VIRGINIA.

James River and Kanawha Company.

CHAP. 21.—An Act to amend the Charter of the James River and Kanawha Company.

Passed March 23, 1860.

1. Be it enacted by the general assembly, that the capital stock of the James river and Kanawha company be, and the same is hereby, increased to twelve million four hundred thousand dollars, in shares of one hundred dollars each.

2. That in addition to the shares now owned by the state in said company, the Board of public works be, and is hereby, directed to subscribe, on behalf of the commonwealth, for seventy-four thousand shares of said capital stock, which shall be declared by said company a six per cent. preferred stock, on which six dollars per share shall be paid to the holders thereof before any dividends shall be paid on other stock of said company; whereof seventy-two thousand shares shall be taken in full satisfaction of the debt now due from the said company to the state, and for the assumption by the state of the debt for which the state is bound as the surety for said company, and the annuity to the old James river company; and for the residue of two thousand shares, the bonds of the state for the aggregate amount of two hundred thousand dollars are to be delivered to the company, to be applied to the extinguishment of the floating debt of the company: provided, that an amount of said debt equal to the amount of said bonds, shall be extinguished thereby.

3. Upon the receipt of the certificates for the said seventy-two thousand shares of stock, the Board of public works shall give to the James river and Kanawha company a receipt in full for the said several debts due to the state, and for any claims against the company on account of the debts for which the state is responsible as security of the company, or on account of the annuity to the old James river company; and shall, by proper deeds, release to said company all liens, whether by deeds of trust, mortgages or otherwise, held by the state upon the works and property of the company, to secure any debt due to the state, or which may be guaranteed by the state.

4. Upon the receipt of the certificates for the said seventy-two thousand shares of the stock, the Board of public works is hereby directed, upon the surrender by the holders thereof, of any of the bonds of the James river and Kanawha company, for the payment of which the state is responsible, to issue to said holders a corresponding amount of the bonds of the state, made in the manner prescribed by law, payable thirty-four years after their date, and bearing interest at the rate of six per centum per annum, payable semi-annually. And the board shall thereupon cancel and file the bonds so sur-

rendered, and deliver to the James river and Kanawha company a statement thereof, with the number, amount and date of each bond.

5. And upon the receipt of the certificates of the residue of two thousand shares of said stock, the Board of public works is directed to issue and deliver to the company the bonds of the state for the aggregate amount of two hundred thousand dollars, to be applied to the extinguishment of the floating debt of the company.

6. The James river and Kanawha company shall have authority to borrow money, at a rate of interest not exceeding seven per centum per annum, payable semi-annually, and not exceeding two million five hundred thousand dollars, for the purpose of completing the canal to Covington, carrying on their other works and paying the residue of their floating debt, and to execute bonds for the amount borrowed, and deeds of trust or mortgages, pledging their works, property and net revenues for the payment of the same: provided, that they shall not borrow in any one year a greater amount than five hundred thousand dollars. The said interest shall be paid semi-annually into the treasury of the commonwealth, for the benefit of the holders of said bonds, on or before the first day of January and July in each year; and the same shall be paid to the holders thereof, upon the warrant of the second auditor, out of said funds so paid into the treasury by said company.

7. The said company, after they may have issued such bonds, shall set apart, on the first day of January and July in each year, a fund not less than the rate of one per centum per annum for a sinking fund for the payment of the principal of such bonds, or such larger rate as may be necessary to provide a fund sufficient for such redemption, at the maturity of such bonds. And the amount to be set apart annually as a sinking fund, shall be paid by the company, one-half thereof on or before the first day of January and July in each year, to the commissioners of the Sinking fund, and invested by them in stocks, as required by the general law regulating the action of said commissioners, and the said commissioners shall keep an account of, and hold and apply the same to the redemption of said bonds, in pursuance of this act: and shall make report to the general assembly, at each session, of their proceedings under this act.

8. Nothing in this act contained shall be so construed as to render the state liable, in any manner whatever, otherwise than as a stockholder of the company, to the holders of any bonds executed for money borrowed under this act.

9. Be it further enacted, that there shall be issued to, and placed under the exclusive control of the Kanawha board of directors of said company, or their successors, as constituted under the act of the general assembly entitled an act providing more effectual means for the improvement of the navigation of the Kanawha river, passed fifteenth of February one thousand eight hundred and fifty-eight, three hundred thousand dollars of the six per cent. registered stock of the commonwealth, to be issued in the mode now provided by law, and the said stock so issued shall be used by said Kanawha board of directors for the improvement of the navigation of said river, from the mouth thereof to Loup creek shoals: provided, however, said Kanawha board shall not dispose of said registered stock at less than par. And said registered stock shall not be issued for an amount exceeding one hundred and fifty thousand dollars

in any one year, nor exceeding twenty thousand dollars in any one month: But before any of said stock shall be issued, the said James river and Kanawha company, by the president thereof, shall execute a deed of trust or mortgage upon the works, property and net revenue of said Kanawha line of improvement, from the mouth thereof to said Loup creek shoals, to the commonwealth, for the payment of the principal and interest of said three hundred thousand dollars: or upon the failure or refusal of said company to execute such deed of trust or mortgage, when required by the Kanawha board, then the said Kanawha board, by their president pro tempore, or other agent, may execute such deed of trust or mortgage; and the same shall be deemed to have the same effect as though it had been executed by said company: and such lien shall take precedence over any lien created by said company, to secure their bonds authorized to be issued by this act. The said Kanawha board shall pay into the treasury of the commonwealth three and one half per centum on or before the fifteenth day of June and December of each year, on such amount of said registered stock as may be issued under this section, for interest, and to provide a sinking fund. The said Kanawha board are hereby authorized and directed to prosecute the construction of said Kanawha line of improvement, free from the control or direction of the president and directors of said James river and Kanawha company, and which is known as the "Eastern board," and shall have the entire control and management of the same, free from such control and direction.

10. The debts of said company, which may not be paid as authorized by this act, or if the holders thereof shall refuse to receive in payment thereof the seven per centum bonds of said company, authorized to be issued by this act, shall not, by reason of the passage of this act, be in any better condition for enforcing the payment thereof; but the liens of the commonwealth existing before the passage of this act, on the works, property and revenue of said improvement, shall, as to them, be deemed to be in full force.

11. The Board of public works shall appoint three proxies to represent the state at the meetings of the stockholders; and the proxies so appointed shall have power to cast three-fifths of all the votes cast in the appointment of the president and other officers elected by the company, except directors of said company, and in fixing the salaries of officers, and in all other questions arising in a meeting of stockholders, and shall allow to said proxies a reasonable compensation for their services. And authority is hereby given to the Board of public works to revise and alter the rates of toll charged by said company, and are directed so to do, so as to adapt them to a remunerative standard. If the location proposed for the line of the canal between the present terminus of the Virginia Central rail road at Jackson's river and the town of Covington, will interfere at any point with any proposed location of the extension of said rail road, and the engineers representing respectively the canal and the rail road cannot agree upon an independent location for each work at such points, then the Board of public works shall determine such location, having due regard to the interest of the commonwealth as a stockholder in each company; and their decision shall be binding.
having due regard to the interest of the commonwealth as a stockholder in each company; and their decision shall be binding.

12. In addition to the rights and powers heretofore granted to and conferred upon the James river company and the James river and Kanawha company, for the collection of tolls on the Kanawha river, the said James river and Kanawha company, their collectors and agents, are hereby authorized and empowered to sue out an attachment before any justice of the peace, against boats and cargoes upon the Kanawha river, for tolls due and unpaid by said boats and cargoes, their owners, masters or shippers.

13. That in case the said James river and Kanawha canal company shall not complete the canal to Covington, or the western terminus of the Virginia Central rail road, within six years from the passage of this act, without any further application to the general assembly for aid, either by loan from the state, subscription, or otherwise, all the property, rights, franchises, and privileges of every kind and description of the said company, shall be transferred to and become the property of the state: and provided further, that the said company shall have no authority to contract any greater amount of debts, or in any other manner than is authorized by the provisions of this bill without the consent of the general assembly; and before this act shall take effect or the Board of public works shall make the subscription to the stock of said company, authorized by it, or release or discharge the liens which the commonwealth holds on the property of the said company, the private stockholders of said company shall, in general meeting assembled, accept the provisions of this act, and duly certify their acceptance thereof to the Board of public works.

14 Be it further enacted, that before the provisions of this act shall take effect, the said James river and Kanawha company shall, in general meeting of the stockholders, accept the same, and such acceptance shall be deemed an acceptance of all the provisions of this act, and as a complete acquiescence in and recognition of all the authority and independent and other powers conferred upon the said Kanawha board by this act.

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 1.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to Jan. 1, 1861.

Name.	Date Paid	Amount.	Reference.	On acct. of
Richmond & Danville R. R. Stock	Mch. 31, 1862	$ 35,657 95	Folio 117 Journal D. Int. Imp. Fd.	Dividend 3%
" " " "	Aug. 1, 1862	35,657 95	" 128 " " " " "	" 3%
" " " "	Mch. 25, 1863	47,543 94	" 139 " " " " "	" 4%
Rich. & Petersburg R. R. "	Feb. 14, 1861	9,640 00	" 82 " " " " "	" 2½%
" " " "	July 3, 1861	9,640 00	" 108 " " " " "	" 2½%
" " " "	Jan. 3, 1862	13,496 00	" 117 " " " " "	" 3½%
" " " "	May 5, 1862	15,424 00	" 128 " " " " "	" 4%
" " " "	Sep. 1, 1862	19,280 00	" 128 " " " " "	" 5%
" " " "	Jan. 3, 1863	23,136 00	" 139 " " " " "	" 6%
" " " "	Apl. 20, 1863	30,848 00	" 148 " " " " "	" 8%
Virginia Central R. R. "	Jan. 23, 1862	58,811 48	Treasurer's Blotter this date	" 3%
" " " "	Mch. 28, 1862	88,217 21	" " " "	" 4½%
" " " "	Sep. 30, 1862	49,009 56	" " " "	" 2½%
Rich., Fred. & Po. R. R. "	Aug. 30, 1862	6,880 00	" " " "	" 2½%
" " " " "	Nov. 8, 1862	8,256 00	Folio 139 Journal D. Int. Imp. Fd.	" 3%
" " " " "	May 13, 1863	22,016 00	" 148 " " " " "	" 8%
" " " " "	Mch. 13, 1863	27,520 00	Treasurer's Blotter this date	Redemption of Div. Bonds prior to 1854.
			" " " "	Dividend 6%
Norfolk & P't'rsburg R. R. "	Jan. 21, 1862	4,950 00	" " " "	" 6%
" " " "	Feb. 6, 1863	4,950 00	" " " "	" 1%
Roanoke Navigation Co. "	Nov. 5, 1861	800 06		

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 1.—(*Continued*)

Farmers' Bank of Va.	"	Jan. 10, 1861	12,327 00	"	"	"	"	"	1%
" " "	"	July 19, 1861	13,207 50	"	"	"	"	"	3½%
" " "	"	Jan. 20, 1862	12,327 00	"	"	"	"	"	3¾%
" " "	"	June 19, 1862	10,566 00	"	"	"	"	"	3½%
" " "	"	Dec. 16, 1862	14,088 00	"	"	"	"	"	3%
" " "	"	June 11, 1863	17,610 00	"	"	"	"	"	4%
" " "	"	Feb. 9, 1861	17,675 00	"	"	"	"	"	5%
" " "	"	July 19, 1861	18,937 50	"	"	"	"	"	3½%
" " "	"	Jan. 20, 1862	17,675 00	"	"	"	"	"	3¾%
" " "	"	June 19, 1862	15,150 00	"	"	"	"	"	3½%
" " "	"	Dec. 16, 1862	20,200 00	"	"	"	"	"	3%
" " "	"	June 11, 1863	25,250 00	"	"	"	"	"	4%
" " "	"	Jan. 10, 1861	3,689 00	"	"	"	"	"	5%
" " "	"	July 19, 1861	3,952 50	"	"	"	"	"	3½%
" " "	"	Jan. 20, 1862	3,689 00	"	"	"	"	"	3¾%
" " "	"	June 19, 1862	3,162 00	"	"	"	"	"	3½%
" " "	"	Dec. 16, 1862	4,216 00	"	"	"	"	"	3%
" " "	"	June 11, 1863	5,270 00	"	"	"	"	"	4%
Bank of Virginia	"	Jan. 10, 1861	20,567 75	"	"	"	"	"	5%
" "	"	July 16, 1861	20,567 75	"	"	"	"	"	3½%
" "	"	Jan. 16, 1861	20,567 75	"	"	"	"	"	3½%
" "	"	Jan. 16, 1861	20,567 75	"	"	"	"	"	3½%
" "	"	June 26, 1861	17,629 50	"	"	"	"	"	3%
" "	"	Jan. 3, 1863	23,506 00	"	"	"	"	"	4%
" "	"	June 25, 1863	29,382 50	"	"	"	"	"	5%
" "	"	Jan. 16, 1861	7,962 50	"	"	"	"	"	3½%
" "	"	July 16, 1861	7,962 50	"	"	"	"	"	3½%

Total $878,871 84

*$127,350.00 of these dividends paid in Confederate Bonds, from which there was realized $16,032.34 less than their face value.

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 2.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to January 1, 1861.

Name.		Date Paid.	Amount.	Reference.	On Account Of
Bank of Virginia	Stock	Jan. 16, 1862	$ 7,962 50	Treasurer's Blotter this date	Dividends 3½ %
" "	"	June 26 1862	6,825 00	" " " "	" 3 %
" "	"	Jan- 3, 1863	9,100 00	" " " "	" 4 %
" "	"	Jan- 10, 1861	5,196 45	" " " "	" 3½ %
" "	"	July 16, 1861	5,196 45	" " " "	" 3½ %
	"	Jan- 16, 1862	5,196 45	" " " "	" 3½ %
" "	"	June 26, 1862	4,454 10	" " " "	" 3 %
" "	"	Jan- 3, 1863	5,938 80	" " " "	" 4 %
" "	"	June 25, 1863	7,423 50	" " " "	" 5 %
Bank of the Valley	Stock	Jan. 18, 1861	3,664 50	" " " "	" 3½ %
" " "	"	Sep. 21, 1861	3,664 50	" " " "	" 3 %
" " "	"	Jan. 9, 1862	3,141 00	" " " "	" 4 %
" " "	"	Jan. 23, 1863	4,188 90	" " " "	" 3½ %
" " "	"	Jan. 18 1861	12,950 00	" " " "	" 3½ %
" " "	"	July 9, 1861	12,950 00	" " " "	" 3 %
" " "	"	Jan. 9, 1862	11,100 00	" " " "	" 4 %
" " "	"	Jan. 23, 1863	14,800 00	" " " "	" 3½ %
" " "	"	Jan. 18 1861	322 00	" " " "	" 3½ %
" " "	"	July 9, 1861	322 00	" " " "	" 3 %
" " "	"	Jan. 9, 1862	276 00	" " "	" 4 %
" " "	"	Jan. 23, 1863	368 00		

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 2. (*Continued*)

Exchange Bank	"	Jan.	7,	1861	934 50	"	"	"	"	3½ %
" "	"	July	5,	1861	1,001 25	"	"	"	"	3¾ %
" "	"	Jan.	13	1862	934 50	"	"	"	"	3½ %
" "	"	Oct.	15,	1862	801 00	"	"	"	"	3 %
" "	"	Mch.	12,	1863	1,068 00	"	"	"	"	4 %
" "	"	July	10,	1863	1,335 00	"	"	"	"	5 %
" "	"	Jan.	7,	1861	29,708 00	"	"	"	"	3½ %
" "	"	July	5,	1861	31,830 00	"	"	"	"	3¾ %
" "	"	Jan.	13,	1862	29,708 00	"	"	"	"	3½ %
" "	"	Oct.	15,	1862	25,464 00	"	"	"	"	3 %
" "	"	Mch.	12,	1863	33,952 00	"	"	"	"	4 %
" "	"	July	10,	1863	42,440 00	"	"	"	"	5 %
Northwestern Bank	"	Feb.	4,	1861	1,141 00	"	"	"	"	3½ %
" "	"	Feb.	4,	1861	10,213 00	"	"	"	"	3½ %
" "	"	Feb.	4,	1861	1,750 00	"	"	"	"	3½ %
Graziers Bank	"	Apl.	1,	1862	14,000 00	"	"	"	"	10 %
" "	"	July	22,	1862	640 00	"	"	"	"	10 %
" "	"	July	22,	1862	7,320 00	"	"	"	"	5 %
" "	"	Jan.	20,	1863	7,320 00	"	"	"	"	5 %
Fairmount Bank	"	Feb.	5,	1861	1,500 00	"	"	"	"	3 %
Total					$368,092 50					

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 3.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of interest received by the State of Virginia from Loans, &c., held by said State subsequent to Jan. 1, 1861.

		Date Paid	Amount	Reference.	On Account Of.
Orange & Alexandria R. R.	Loan	Oct 25, 1862	$ 11,926 71	Treas.'s Blotter this date	Int. on Loan
"	"	Nov. 15, 1862	23,000 00	" "	"
"	"	Dec. 20, 1862	12,272 04	" "	"
"	"	Jan. 28, 1863	2,474 51	" "	"
Richmond & Danville R. R.	"	Aug. 31, 1861	25,550 39	Folio 107 Journal D Inter. Im'pt Fund	"
"	"	Aug. 1, 1862	33,591 22	" 128 " "	"
Richmond & Petersburg R. R.	"	Nov. 7, 1861	1,703 81	" 117 " "	"
Virginia Central R. R.	Div. Bonds	July 25, 1861	1,325 34	" 107 " "	Int. on Div. Bonds
"	" "	Nov. 26, 1861	4,616 48	" 117 " "	"
"	" "	July 23, 1862	2,650 68	" 129 " "	"
"	" "	Nov. 6, 1862	5,959 80	" 139 " "	"
"	" "	Jan. 17, 1863	722 20	" 139 " "	"
"	" "	Jan. 17, 1863	1,441 53	" 139 " "	"
"	Loan	July 25, 1861	7,350 00	" 107 " "	Int. on Loan
"	"	Jan 3, 1862	7,350 00	" 126 " "	"
"	"	July 18, 1862	7,350 00	" 128 " "	"
"	"	Jan 7, 1863	7,350 00	" 138 " "	"
Winchester & Potomac R. R.	Annuity	July 27, 1861	4,166 67	" 107 " "	On % of Annuity
Virginia & Tennessee R. R	Loan	July 22, 1861	20,000 00	" 107 " "	Int. on Loan
"	"	Jan. 4, 1862	35,000 00	" 126 " "	"
"	"	Jan. 11, 1862	14,394 43	" 116 " "	"
"	"	Aug 13, 1862	35,000 00	" 128 " "	"
"	"	Feb. 20, 1863	33,368 43	" 138 " "	"

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 3. (*Continued*)

South Side Railroad.	"	July 26, 1862	28,000 00	" 128	"	"	"
"	"	Sep 23, 1862	56,000 00	" 128	"	"	"
"	"	Jan 16, 1863	28,000 00	" 138	"	"	"
Washington College.	"	Sep 12, 1861	60 00	Literary Fund Cash Bk. No. 5 (not paged)			"
"	"	Mch. 31, 1862	60 00	"	"		"
"	"	Aug. 5, 1862	60 00	"	"		"
"	"	Feb. 4, 1862	60 00	"	"		"
Richmond Academy Bonds.		Aug. 9, 1861	12 00	"	"	Int. on Bonds	
"		Mch. 31, 1862	12 00	"	"		"
"		Aug. 5, 1862	12 00	"	"		"
"		Feb. 4, 1863	12 00	"	"		"
R. F. & P. R. R.	Div. Bond	Apl. 18, 1862	6,687 36	Folio 129 Journal D Inter. Im'pt Fund			"
" "	"	Aug 30, 1862	1,348 48	" 129	"	"	"
" "	"	Aug. 30, 1862	3,343 68	" 129	"	"	"
" "	"	Jan. 22, 1863	4,692 16	" 139	"	"	"
" "	"	Mch. 13, 1863	325 69	" 139	"	"	"
			$427,249 61				

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 4.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to January 1, 1861.

Name of Stock.		Date Paid.	Amount	Reference.				On Account Of.			
O. & A. R. R. Co.	Stock	Sept. 8, 1864	$ 34,912 00	Folio 157	Jou'l D	Int.	Im'pt Fund	4%	Div. on	$	872,802 83
Rich. & Dan. R. R. Co.	"	Sept. 9, 1863	71,315 91	" 148	"	"		6%	" "		1,188,598 50
" " "	"	Mar. 26, 1864	59,429 92	" 157	"	"		5%	" "		1,188,598 50
Rich & Pet. R. R Co.	"	*July 31, 1863	1,278 20	" 148	"	"		6%	" "		385,600 00
" " "	"	Nov. 3, 1863	38,560 00	" 157	"	"		10%	" "		385,600 00
" " "	"	Jan. 15, 1884	15,424 00	" 157	"	"		4%	" "		385,600 00
" " "	"	Sept. 20, 1864	38,560 00	" 157	"	"		10%	" "		385,600 00
Va. Cen. R. R. Co.	"	Sept. 19, 1864	60,419 62	" 157	"	"		3%	" "		2,013,987 52
" " "	"	Nov. 3, 1863	80,559 50	" 157	"	"		4%	" "		2,013,987 52
" " "	"	Sept. 19, 1864	60,419 62	" 157	"	"		3%	" "		2,013,987 52
Rh. & York River Co.	"	Aug. 15, 1863	29,459 97	" 148	"	"		8%	" "		490,999 52
" " "	"	Jan 28, 1864	24,549 97	" 157	"	"		5%	" "		490,999 52
Va. & Tenn. R. R. Co	"	Mar. 26, 1864	100,000 00	" 157	"	"		6%	" "		2,300,000 00 (Part payment)
" " "	"	Apl. 1, 1864	38,000 00	" 157	"	"		6%	" "		2,300,000 00 (Balance.)
Nor. & Pet. R. R. Co.	"	**Sept. 7, 1853	150 48	" 149	"	"		3%	" "		82,500 00
" " "	"	Mar. 23, 1864	2,475 00	" 158	"	"		3%	" "		82,500 00
" " "	"	Feb. 22, 1865	4,950 00	" 166	"	"		6%	" "		82,500 00
Roanoke Nav. Co.	"	Apr. 30, 1868	320 00	Treas.'s Blot. this date				4/10%	" "		80,000 00
" " "		Mar. 5, 1869	480 00		"	"		6/10%	" "		80,000 00
" " "		Nov 1, 1871	400 00		"	"		1/2 %	" "		80,000 00

DIVIDENDS FROM STOCKS.

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 4. (*Continued*)

"	"	"		Dec. 13, 1872	400 00	"	"	1/2 %	"	"	80,000 00
"	"	"		Sept 10, 1874	400 00	"	"	1/2 %	"	"	80,000 00
Upper Appomat. Co.			"	Apl. 19, 1867	625 00	"	"	5%	"	"	12,500 00
"	"	"	"	Aug. 17, 1867	500 00	"	"	4%	"	"	"
"	"	"	"	Nov. 29, 1867	500 00	"	"	4%	"	"	"
"	"	"	"	Feb. 22, 1868	375 00	"	"	3%	"	"	"
"	"	"	"	May 27, 1868	375 00	"	"	3%	"	"	"
"	"	"	"	Sept. 1, 1868	312 50	"	"	2½ %	"	"	"
"	"	"	"	Nov. 25, 1868	312 50	"	"	2½ %	"	"	"
"	"	"	"	Mch. 3, 1869	375 00	"	"	3%	"	"	"
"	"	"	"	June 2, 1869	375 00	"	"	3%	"	"	"
"	"	"	"	Dec. 3, 1869	375 00	"	"	3%	"	"	"
"	"	"	"	Mch. 29, 1870	375 00	"	"	3%	"	"	"
"	"	"	"	July 1, 1870	312 50	"	"	2½ %	"	"	"
"	"	"	"	May 18, 1871	375 00	"	"	3%	"	"	"
"	"	"	"	Aug. 2, 1871	375 00	"	"	3%	"	"	"
"	"	"	"	Mch. 7, 1872	375 00	"	"	1– 3%	"	"	"
"	"	"	"	Apl. 8, 1872	212 50	"	'	1-1/10%	"	"	"

*Total payment $23,136.00—balance already claimed.
**Total payment $2,475.00—balance already claimed

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 5.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to January 1, 1861.

Name of Stock.		Date Paid.	Amount.	Reference.	On Account of
Farmers Bank of Va.	Stock	Dec. 19, 1863	$26,415 00	Folio 156 Jour. D Int. Imp. Fund	7½ % Div. on 3522 shares
" " "	"	June 24, 1864	14,088 00	Folio 157 Jour. D Int. Imp. Fund	4 % Div. on 3522 shares
" " "	"	Dec. 20, 1864	28,176 00	Folio 166 Jour. D Int. Imp. Fund	8 % Div. on 3522 shares
" " "	"	‡Dec. 1, 1863	33,942 57	Treasurer's B. this date	7½ % Div. on 5050 shares
" " "	"	June 1, 1864	20,200 00	" "	4 % Div. on 5050 shares
" " "	"	Dec. 1, 1864	40,400 00	" "	8 % Div. on 5050 shares
" " "	"	•June 1, 1863	7,075 27	" "	7½ % Div. on 1054 shares
" " "	"	June 1, 1864	4,216 00	" "	4 % Div. on 1054 shares
" " "	"	Dec. 1, 1864	8,432 00	" "	8 % Div. on 1054 shares
Bank of Virginia	Stock	Dec. 29, 1863	44,073 75	Folio 156 Jour. D Int. Imp. Fund	7½ % Div. on 8395 shares
" "	"	June 1, 1864	23,506 00	Folio 157 Jour. D Int. Imp. Fund	4 % Div. on 8395 shares
" "	"	Dec. 1, 1864	47,012 00	Folio 166 Jour. D Int. Imp. Fund	8 % Div. on 8395 shares
" "	"	June 25, 1863	11,375 00	Treasurer's B. this date	5 % Div. on 3250 shares
" "	"	Dec. 29, 1863	17,062 50	" "	7½ % Div. on 3250 shares
" "	"	June 29, 1864	9,100 00	" "	4 % Div. on 3250 shares
" "	"	Dec. 29 1864	18,200 00	" "	8 % Div. on 3250 shares
" "	"	†Dec. 29, 1863	9,966 37	" "	7½ % Div. on 2121 shares
" "	"	June 29, 1864	5,938 80	" "	4 % Div. on 2121 shares
" "	"	Dec. 29, 1864	11,877 60	" "	8 % Div. on 2121 shares

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 5. (*Continued*)

Bank of the Valley	"	Mar.	25, 1864	4,188 00	Folio 157	Jour. D Int. Imp. Fund	4	%	Div. on 1047	shares
" "	"	Mar.	25, 1864	14,800 00		Treasurer's B. this date	4	%	Div. on 1047	shares
" "	"	Mar.	25, 1864	368 00		" "	4	%	Div. on 1047	shares
Exchange Bank	"	Jan.	13, 1864	2,136 00	Folio 156	Jour. D Int. Imp. Fund	8	%	Div. on 268	shares
" "	"	Jan.	13, 1865	2,136 00	Folio 166	Jour. D Int. Imp. Fund	8	%	Div. on 267	shares
" "	"	§Jan.	13 1864	60,853 86		Treasurer's B. this date	8	%	Div. on 8488	shares
" "	"	July	2, 1864	35,020 00		" "	4½	%	Div. on 8488	shares
" "	"	Jan.	13, 1865	67,904 00		" "	8	%	Div. on 8488	shares
Grazier's Bank, formerly branch N. W. Bank at Jeffersonville	"	July	28, 1863	6,820 00		" "	5	%	Div. on 1346	shares
N. W. Bank at Jeffersonville	"	Feb.	1, 1864	6,820 00		" "	5	%	Div. on 1346	shares
Richmond, Fredericksburg & Potomac R. R. Co.	"	Dec.	30, 1863	50,912 00	Folio 157	Jour. D Int. Imp. Fund	18½	%		$275,200 00
" "	"	Nov.	24, 1864	35,776 00	Folio 166	Jour. D Int. Imp. Fund	13	%		275,200 00
" "	"	Feb.	4, 1874	9,632 00		Treasurer B. this date	3½	%		275,200 00
" "	"	Feb.	7, 1883	9,356 00		" "	3	%		275,200 00
" "	"	Dec.	14, 1882	9,356 00		" "	3	%		275,200 00

‡Total payment $37,875.00. Balance already claimed.
•Total $11,135.25. Balance already claimed.
†Total $11,135.25. Balance already claimed.
§Total $67,904.00. Balance already claimed.

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 6.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to January 1, 1861.

Name of Stock.		Date Paid.	Amt.	Reference.		On Account Of.		
Richmond, Fredericksburg & Potomac R. R. Co.	Stock	Jan. 19, 1884	$ 30,407 00	Treasurer's Blotter	this date	6½ %	$467,800.00 Stock &	Div. Bonds.
"	"	Jan. 27, 1887	28,068 00	"	"	6%	" "	"
"	"	July 28, 1887	14,034 00	"	"	3%	" "	"
"	"	Jan. 19, 1888	16,373 00	"	"	3½ %	" "	"
"	"	Aug. 3, 1888	16,373 00	"	"	3½ %	" "	"
"	"	Jan. 28, 1889	16,373 00	"	"	3½ %	" "	"
"	"	July 18, 1889	16,373 00	"	"	3½ %	" "	"
"	"	Jan. 17, 1890	14,034 00	"	"	3%	" "	"
		July 19, 1890	16,373 00	"	"	3½ %	" "	"
"	"	Jan. 22, 1891	16,373 00	"	"	3½ %	" "	"
"	"	July 20, 1891	16,373 00	"	"	3½ %	" "	"
"	"	Jan. 21, 1892	16,373 00	"	"	3½ %	" "	"
"	"	July 21, 1892	16,373 00	"	"	3½ %	" "	"
"	"	Jan. 11, 1893	16,373 00	"	"	3½ %	" "	"
"	"	July 3, 1893	16,373 00	"	"	3½ %	" "	"
"	"	Jan. 10, 1894	16,373 00	"	"	3½ %	" "	"
"	"	July 5, 1894	14,034 00	"	"	3%	" "	"
"	"	Jan. 8, 1895	16,373 00	"	"	3½ %	" "	"
"	"	July 8, 1895	16,373 00	"	"	3½ %	" "	"
"	"	Jan. 16, 1896	16,373 00	"	"	3½ %	" "	"
"	"	July 16, 1896	16,373 00	"	"	3½ %	" "	"
"	"	Jan. 8, 1897	16,373 00	"	"	3½ %	" "	"

DIVIDENDS FROM STOCKS.

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 6. (*Continued*)

"	"	July	13, 1897	14,034 00	"	"	3%	"	"	"
"	"	Jan.	10, 1898	16,373 00	"	"	3½%	"	"	"
"	"	July	6, 1898	16,373 00	"	"	3½%	"	"	"
"	"	Jan.	9, 1899	16,373 00	"	"	3½%	"	"	"
"	"	July	3, 1899	16,376 50	"	"	3½%	467,900.00 Plus Div. Bond.		
"	"	Jan.	2, 1900	18,716 00	"	"	4%	"	"	"
"	"	July	9, 1900	18,716 00	"	"	4%	"	"	"
"	"	Jan.	4, 1901	18,716 00	"	"	4%	"	"	"
"	"	July	5, 1901	18,716 00	"	"	4%	"	"	"
"	"	Jan.	3, 1902	18,716 00	"	"	4%	"	"	"
"	"	July	1, 1902	18,716 00	"	"	4%	"	"	"
"	"	Feb.	4, 1903	18,716 00	"	"	4%	"	"	"
"	"	July	2, 1903	18,716 00	"	"	4%	"	"	"
"	"	Jan.	4, 1904	18,716 00	"	"	4%	"	"	"
"	"	July	1, 1904	18,716 00	"	"	4%	"	"	"
"	"	Jan.	3, 1905	21,055 50	"	"	4½%	"	"	"
"	"	July	1, 1905	21,055 50	"	"	4½%	"	"	"
"	"	Jan.	2, 1906	21,055 50	"	"	4½%	"	"	"
"	"	July	5, 1906	21,055 50	"	"	4½%	"	"	"
"	"	Jan.	3, 1907	21,055 50	"	"	4½%	"	"	"
"	"	July	1, 1907	26,316 00	"	"	4½%	584,800 00		
"	"	Jan.	3, 1908	26,320 50	"	"	4½%	584,900 00		
"	"	July	1, 1908	26,320 50	"	"	4½%	"	"	"

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 7.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to January 1, 1861.

Name of Stock.	Date Paid.	Amt.	Reference.	On Account Of.
Richmond, Fredericksburg & Potomac R. R. Co.	Stock Jan. 2, 1909	$ 26,320 50	Treasurer's Blotter this date	4½% $584,900.00 Plus Div. Bond.
"	" July 1, 1909	26,320 50	" "	4½% " "
"	" Jan. 4, 1910	26,320 50	" "	4½% " "
"	" July 2, 1910	26,350 50	" "	4½% " "
"	" Jan. 3, 1911	26,350 50	" "	4½% " "
"	" July 1, 1911	26,350 50	" "	4½% " "
"	" Jan. 2, 1912	26,350 50	" "	4½% " "
"	" July 1, 1912	26,350 50	" "	4½% " "
"	" Jan. 2, 1913	26,350 50	" "	4½% " "
"	" July 1, 1913	26,350 50	" "	4½% " "
"	" Jan. 2, 1914	26,350 50	" "	4½% " "
		$2,485,116 41		
Bank of Virginia	" June 25, 1863	7,423 50	" "	Dividend on Stock.
"	" June 25, 1863	29,382 50	" "	" "
Exchange Bank	" July 10, 1863	1,335 00	" "	" "
"	" July 10, 1863	42,440 00	" "	" "
Grand Total Dividends		$3,812,668 75		

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 8.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of interest received by the State of Virginia from Loans, &c., held by said State subsequent to Jan. 1, 1861.

INTEREST FROM LOANS.

Name.				Date Paid.			Amount.	Reference.	On Account Of.	Note.
Orange & Alexandria	R.	R.	Co.	Loan	June	23, 1863	$ 9,284 50	Treasr's Blotter this date	Int. on Loan	
"	"	"		"	Jan.	16, 1864	2,823 56	" " " "	" " "	
"	"	"		"	Sept.	8, 1864	14,000 00	" " " "	" " "	
"	"	"		"	Dec.	31, 1864	7,677 68	" " " "	" " "	
"	"	"		"	Jan.	1, 1865	60 86	Snkg. Fund Rec'd, p. 191	" " "	
"	"	"		"	Aug.	26, 1868	20,000 00	Treasr's. Blotter this date	" " "	
"	"	"		"	Nov.	1, 1868	30,689 45	Jr. "N," B. of P. W., p. 389	" " "	
"	"	"		"	Mch.	28, 1872	43,510 92	" " " "	" " "	
"	"	"		"	Oct.	17, 1872	7,050 11	" " " 407	" " "	
Richmond & Danville	R.	R.	Co.	Loan	Sept.	9, 1863	33,086 70	Treasr's. Blotter this date	" " "	
"	"	"		"	Aug.	29, 1864	32,551 90	" " " "	" " "	
"	"	"		"	Sept.	5, 1868	35,470 56	Stm't. in File Box C. Com.	" " "	
"	"	"		"	Sept.	12, 1868	11,885 40	" " " "	" " "	
"	"	"		"	Sept.	15, 1868	10,000 00	" " " "	" " "	
"	"	"		"	Sept.	24, 1868	11,900 25	" " " "	" " "	
"	"	"		"	Oct.	2, 1868	2,805 00	" " " "	" " "	
"	"	"		"	Oct.	6, 1868	11,774 14	" " " "	" " "	
"	"	"		"	Oct.	6, 1868	1,290 00	" " " "	" " "	
"	"	"		"	Dec.	31, 1868	2,917 63	" " " "	" " "	
"	"	"		"	Sept.	3, 1868	42,000 00	Treasr's. Blotter this date	" " "	
"	"	"		"	Sept.	15, 1869	21,000 00	" " " "	" " "	
"	"	"		"	Dec.	15, 1869	8,912 07	" " " "	" " "	

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 8. (*Continued*)

"	"	"	"	May	7, 1870							
"	"	"	"	Sept.	10, 1870	31,259 74	"	"	"	"	"	"	"
"	"	"	"	June	9, 1871	21,000 00	"	"	"	"	"	"	"
"	"	"	"	Feb.	15, 1872							
"	"	"	"	Mch.	15, 1872	40,230 64	"	"	"	"	"	"	"
"	"	"	"	Sept.	30, 1874	44,485 00	"	"	"	"	"	"	"
"	"	"	"	Oct.	13, 1874	13,915 00	"	"	"	"	"	"	"
"	"	"	"	Nov.	27, 1875	6,000 00	"	"	"	"	"	"	"
"	"	"	"	Dec.	1, 1875	5,724 00	"	"	"	"	"	"	"
"	"	"	"	Oct.	2, 1876	31,130 00	Min.of Snkg. Fd.,		p.	214	"	"	"
"	"	"	"	June	27, 1877	20,777 88	"	"	"	218	"	"	"
"	"	"	"	Jan.	7, 1879	30,462 85	"	"	"	223	"	"	"
"	"	"	"	Sept.	30, 1869	62,067 70	"	"	"	227	"	"	"
"	"	"	"	Sept.	30, 1879	1 69	"	"	"	227	"	"	"
"	"	"	"	Dec.	5, 1879	4,152 63	"	"	"	228	"	"	"
"	"	"	"	Dec.	5, 1879						"	"	"
"	"	"	"	Nov.	26, 1880	22,289 31					"	"	"
"	"	"	"	Sept.	30, 1881						"	"	"
"	"	"	"	Nov.	26, 1881	25,718 31	"	"	"	230	"	"	"
"	"	"	"	Nov.	23, 1886	18,900 00	"	"	"	285	"	"	"
Virginia	Central	R. R.	Div.	Bonds	Nov. 3, 1863	3,519 00	Treasr's. Blotter this date				Int. on	Div.	Bonds
"	"	"	"	"	Aug. 25, 1870	23,601 00	Stm't in File Box C. Com.				"	"	"

Bonds deposited B.P. W. 8/25/70 See report 2d Auditor for 1871.

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 9.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of interest received by the State of Virginia from Assets held by said State subsequent to Jan. 1, 1861.

Name.	Date Paid.	Amount.	Reference.	On Account of
* Virginia Central R. R. Loan	July 21, 1863	$ 446 67	Jour. D. Int. Imp. Fd. p. 155	Int. on Loan
" " " " "	Jan. 8, 1864	7,350 00	" " " " " " 165	" " "
" " " " "	Sep. 19, 1864	7,350 00	" " " " " " "	" " "
" " " " "	July 30, 1868	7,350 00	Treasr's. Blotter this date	" " "
" " " " "	Sep. 17, 1868	7,350 00	" " " "	" " "
" " " " "	Aug. 25, 1870	48,573 40	" " " "	" " "
Winchest'r & Pot'm'c R. R. An'ty.	Sep. 30, 1873	35,184 79	Jour. D. Int. Imp. Fd. p. 175	Ar. of Annuity
** Southside R. R. Co. Loan	July 6, 1863	15,624 31	" " " " " " 155	Int. on Loan
" " " " "	Aug. 8, 1863	10,897 66	Treasr's. Blotter this date	" " "
" " " " "	Aug. 17, 1863	21,000 00	" " " "	" " "
" " " " "	Sep. 16, 1863	20,102 34	" " " "	" " "
Norfolk & Petersburg R. R. Loan	Jan. 11, 1864	45,000 00	" " " "	" " "
" " " " "	Oct. 5, 1868	15,000 00	" " " "	" " "
" " " " "	Sep. 28, 1869	9,561 41	" " " "	" " "
*** Washington College Loan	Aug. 26, 1863	3 65	Lit. Fd. Cash Bk. 5, not paged	" " "
" " "	Mch. 24, 1864	60 00	" " " "	" " "
" " "	Sep. 2, 1864	60 00	" " " "	" " "
" " "	Dec. 2, 1871	780 00	" " 1, page 18	" " "
" " "	Aug. 22, 1872	60 00	" " " " 22	" " "
" " "	Aug. 22, 1872	60 00	" " " "	" " "
" " "	Nov. 21, 1873	120 00	" " " " 36	" " "
" " "	July 21, 1874	120 00	" " " " 44	" " "

INTEREST FROM ASSETS.

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 9. (*Continued*)

"	"	"	July 23, 1875	120 00	"	"	"	" 52	"	"	"
"	"	"	July 17, 1876	120 00	"	"	"	" 62	"	"	"
"	"	"	Aug. 23, 1877	120 00	"	"	"	" 70	"	"	"
"	"	"	Aug. 26, 1878	120 00	"	"	"	" 78	"	"	"
"	"	"	July 16, 1879	120 00	"	"	"	" 86	"	"	"
"	"	"	July 6, 1880	60 00	"	"	"	" 96	"	"	"
"	"	"	Sep. 18, 1880	60 00	"	"	"	" 98	"	"	"
"	"	"	July 23, 1881	120 00	"	"	"	" 104	"	"	"
"	"	"	July 20, 1882	120 00	"	"	"	" 114	"	"	"
"	"	"	July 27, 1883	122 00	"	"	"	" 122	"	"	"
"	"	"	July 14, 1884	120 00	"	"	"	" 130	"	"	"
"	"	"	July 14, 1885	120 00	"	"	"	" 140	"	"	"
"	"	"	July 14, 1886	120 00	"	"	"	" 150	"	"	"
"	"	"	July 25, 1887	120 00	"	"	"	" 160	"	"	"
"	"	"	July 19, 1888	120 00	"	"	"	" 170	"	"	"
"	"	"	July 9, 1889	120 00	"	"	"	" 180	"	"	"
"	"	"	July 18, 1890	120 00	"	"	"	" 190	"	"	"
"	"	"	July 11, 1891	120 00	"	"	"	" 198	"	"	"
"	"	"	July 12, 1892	120 00	"	"	"	" 208	"	"	"
"	"	"	Jan. 6 1893	60 00	"	"	"	" 212	"	"	"
"	"	"	Oct. 7, 1893	60 00	"	"	"	" 218	"	"	"
"	"	"	Jan. 13, 1894	60 00	"	"	"	" 220	"	"	"
"	"	"	July 5, 1894	60 00	"	"	"	" 224	"	"	"

Bonds deposited with B. P. W. See report Second Auditor for 1871.

*Total payment, $7,350.00. Balance already claimed.

** Total, $28,000.00. Balance already claimed.

*** Total, $60.00. Balance already claimed.

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 10.

Hillman Exhibit 12.
Defendant Exhibit 12.

STATE OF WEST VIRGINIA.

Statement showing various amounts of interest received by the State of Virginia from Assets held by said State subsequent to Jan. 1, 1861.

	Date Paid.	Amount.	Reference.	On Account of
Washington College Loan	July 2, 1895	$ 120 00	Lit. Fd. Cash Book No. 1 Page 234	Interest on Loan
" " "	Jan. 9, 1896	60 00	" " " " " " " 238	" " "
• Richmond Academy Bonds	Aug. 26, 1863	74	" " " " 5 Not Paged	Int. on Bonds
" " "	Mch. 24, 1864	12 00	" " " " " " " "	" " "
" " "	Sep. 2, 1864	12 00	" " " " " " " "	" " "
" " "	Jan. 31, 1872	180 00	" " " " " " " 18	" " "
" " "	July 23, 1872	12 00	" " " " " " " 24	" " "
" " "	July 21, 1873	12 00	" " " " " " " 34	" " "
" " "	July 21, 1873	12 00	" " " " " " " 34	" " "
" " "	July 21, 1874	24 00	" " " " " " " 44	" " "
" " "	July 19, 1875	24 00	" " " " " " " 52	" " "
" " "	July 17, 1876	24 00	" " " " " " " 62	" " "
" " "	July 3, 1877	24 00	" " " " " " " 70	" " "
" " "	July 3, 1879	24 00	" " " " " " " 78	" " "
" " "	July 10, 1879	24 00	" " " " " " " 86	" " "
" " "	July 23, 1880	24 00	" " " " " " " 96	" " "
" " "	July 21, 1881	24 00	" " " " " " " 104	" " "
" " "	July 20, 1882	24 00	" " " " " " " 114	" " "
" " "	July 27, 1883	24 00	" " " " " " " 122	" " "
" " "	Dec. 17, 1884	24 00	" " " " " " " 134	" " "
" " "	July 17, 1885	24 00	" " " " " " " 140	" " "
" " "	Mch. 8, 1886	12 00	" " " " " " " 146	" " "

DEFENDANT'S EXHIBIT No. 12—10 Sheets—1861.

Sheet 10. (*Continued*)

	"	"	"	July 28, 1886	12 00	"	"	"	"	"	"	150	"	"	"
	"	"	"	Nov. 22, 1887	24 00	"	"	"	"	"	"	164	"	"	"
	"	"	"	July 24, 1888	24 00	"	"	"	"	"	"	170	"	"	"
	"	"	"	July 8, 1889	24 00	"	"	"	"	"	"	178	"	"	"
	"	"	"	July 18, 1890	24 00	"	"	"	"	"	"	190	"	"	"
	"	"	"	July 20, 1891	24 00	"	"	"	"	"	"	198	"	"	"
	"	"	"	July 8, 1892	24 00	"	"	"	"	"	"	206	"	"	"
	"	"	"	Oct. 7, 1893	12 00	"	"	"	"	"	"	218	"	"	"
	"	"	"	Feb. 5, 1896	48 00	"	"	"	"	"	"	240	"	"	"
**	Rich., Fred. & Pot'm'c, Div. Bonds			June 30, 1863	234 87	Board of Public Works Cash Book							"	"	"
	"	"	"	Jan. 3, 1873	2,696 96	Sinking Fund Cash Book							"	"	"
	"	"	"	Jan. 3, 1873	1,051 82	"	"	"	"						
	U. S. Government Claim, Exhibit 3				592,761 22										
	Interest Grand Total				$2,809,236 41										

* Total, $12.00. Balance already claimed.

** Total, $3,866.56. Balance already claimed.

Dividend Grand Total	$3,812,668 75
Aggregate	$6,621,905 16

Defendant's Exhibits

1863.

Schedules
Compiled and Prepared by
THE MUTUAL AUDIT CO.
LOUISVILLE, KY.

DEFENDANT'S EXHIBIT No. 1—1863.

Page No. 1.

Class A.
Sheet 1.

Hillman Exhibit 1.
(Corresponds with Hillman Exhibit 1, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing Cash in hands of the Treasurer of the Commonwealth of Virginia to the credit of various funds, June 20, 1863.

LITERARY FUND:			
(As shown page 69, Lit. Fund Ledger, March 31, 1863...	$ 10,961 46		
Receipts March 31, 1863, to June 20, 1863, as follows:			
Journal, page 90	6,056 40		
Journal, page 91	4,733 22		
		$ 21,751 08	
Payments March 31, 1863, to June 20, 1863, as follows:			
Journal, pages 91-92 ...	819 79		
Journal, page 92	15 00		
		834 79	
Balance June 20, 1863		$ 20,916 29	
Less Dawson Fund Cash....		8,600 00	
Balance State Funds..			$ 12,316 29
BOARD OF PUBLIC WORKS:			
(As shown page 247, Ledger "B," on file 2d Audr's. Office)	224,761 04		
Receipts March 31, 1863, to June 20, 1863, as follows:			
Journal, page 147	63,910 50		
Journal, page 148	109,995 64		
Journal, page 149	200,275 00		
		598,942 18	
Payments March 31, 1863, to June 20, 1863, as follows:			
Journal, page 151	30,823 28		
Journal, pages 152-3 ...	1,137 82		
Journal, page 153	3,005 09		
Journal, page 154	45 00	35,011 19	
			563,930 99

DEFENDANT'S EXHIBIT No. 1—1863.

(*Continued*) Page No. 1.

COMMONWEALTH FUND:			
(Page 180, First Auditor's Ledger, in account headed J. S. Calvert, Treas., May 31, 1863)	2,314,577 24		
Journal, page 185	149,545 07		
Journal, page 186	114,173 75		
Journal, page 187	75,000 57		
Journal, page 188	50,989 55		
Journal, page 189	188,611 19		
Journal, page 190	14,199 00		
Journal, page 191	55,912 55		
		2,963,008 92	
Payments March 31, 1863, to June 20, 1863, as follows:			
Day Book Audr's. Office, page 194, April.....	382,775 37		
Day Book, Audr's. Office, page 194, May.....	130,501 77		
Cash Book M. M. Treasr's. Office, June 1, 1863, to June 20, 1863, pages 100 to 105	709,958 67	1,223,235 81	
			1,739,773 11

DEFENDANT'S EXHIBIT No. 1—1863.

Page No. 2.

STATE OF WEST VIRGINIA.

Class A.
Sheet 2.

Hillman Exhibit 1.
(Corresponds with Hillman Exhibit 1, Jan. 1, 1861.)

SINKING FUND:			
(Sinking Fund, Ledger No. 1, 1853-1865)			
Page 2, acct. headed J. S. Calvert, Treas., Oct. 1, 1862.	$ 104,167 20		
Pages 58-59, Journal, Sinking Fund	664,093 44		
		$ 768,260 64	
Payments—Pages 60-61, Journal, Sinking Fund		625,064 74	
			$ 143,195 90
Total cash			$2,459,216 29

DEFENDANT'S EXHIBIT No. 2—1863.

Class B.

Hillman Exhibit 2.
Defendant Exhibit 2.
(Corresponds with Exhibit 2, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing holdings of the State of Virginia in the Richmond, Fredericksburg & Potomac R. R., June 20, 1863, and their book values on the dates mentioned, no figures being obtainable for the exact date of June 20, 1863.

	Par $100.	Value 6/20/63 Per Share.	Book Value.
Richmond, Fredericksburg & Potomac Stock (page 184, Ledger "B," Internal Improvement Fund), 2,752 shares	$ 275,200 00	$ 184 50	$ 507,744 00

Following figures taken from official reports of the R. R. Co. on file in the Treasurer's Office, Richmond, Va.

Page of said record.	Date.	Outstanding Stock.	Surplus.	Book Value Plus Stock in Treasury.	Book Value Minus Stock in Treasury.
Pen & Ink. Bound in	March 31, 1863	$1,142,900 00	$ 952,160 86	183 31	183 60
Pen & Ink. Bound in	March 31, 1864	1,142,900 00	998,736 92	187 39	187 69
11	Sept. 30, 1864	1,142,900 00	1,160,988 43	201 58	203 54

N. B.—Increase of March 31, 1864, over March 31, 1863, was 187.69 over 183.60 or 4.09; 80 days to June 20, 1863, would be 80/365 of 4.09 or .90, which added to 183.60 would give us 184.50.

DEFENDANT'S EXHIBIT No. 2—1863.
(Continued)

Dividends declared on R., F. & P. Stock from 1850 to 1864, inclusive:

Year.	Amt. of Stock.	Paid in Cash.	Paid in Bonds.
1850	$1,000,000 00	7%	
1851	1,000,000 00	7%	
1852	1,000,000 00	7%	
1853	1,000,000 00	7%	
1854	1,000,000 00	3½%	3½%
1855	1,000,000 00		7%
1858	1,033,600 00		
1859	1,043,700 00		7%
1860	1,043,700 00		7%
1861	1,116,100 00	3½%	(not paid until 1873)
1862	1,142,900 00	5½%	
1863	1,142,900 00	26½%	
1864	1,142,900 00	13%	

N. B.—All stock above $1,000,000 was guaranteed stock and paid 7% guarantee and participated in anything above that that the other stock earned.

Total dividends paid in 15 years as above, 104½%, or almost 7% per year.

DEFENDANT'S EXHIBIT No. 2—1863.
Sub-Sheet 1

Class B.

Hillman Exhibit 2.
Defendant Exhibit 2.
Subsheet 1.
(Corresponds with Exhibit 2, Subsheet 1, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement of the affairs of the Richmond, Fredericksburg & Potomac R. R. Company from the commencement of the work to the 31st of March, 1863.

Assets.

Cost of Road & Property:		
From Richmond to Acquia Creek	$1,534,147 44	
Cost of new superstructure, heavy iron, etc.	563,649 47	
Engineering expenses to Manassas & Quantico	2,321 87	

Liabilities.

Capital Stock:		
Subscribed by the State, 2,752 shares old stock	$ 275,200 00	
Subscribed by individuals		
4,248 shares old stock	424,800 00	
3,000 shares new stock	300,000 00	
1,429 shares gtd. stock	142,900 00	$1,142,900 00

DEFENDANT'S EXHIBIT No. 2—1863.
(*Sub-Sheet* 1—*Continued.*)

Property conveyed to E. Robinson	147,858 13	$2,247,976 91
Debts due to the Company:		
From individuals on new stock	1,820 00	
From bills receivable	19,068 13	
From sundries in open account	97,181 69	
From Confederate States for transportation of freight & passengers	193,312 98	
From Confederate States for expense of reconstructing bridges destroyed	22,422 67	333,805 47
Investments:		
Seaboard & Roanoke R. R. Stock	24,616 94	
Stock of this Company	4,009 00	
Potomac Steamboat Co. Stock.	38,900 00	
Confederate States Bonds (8%)	240,050 00	307,575 94
Cash:		
On hand March 31, 1863	4,730 94	4,730 94
Total		$2,894,089 26

Debts due by the Company of a permanent nature:		
Coupon & Conv't'le. Bonds due in U. S. '75	21,000 00	
Coupon Bonds due in London in 1875	57,333 33	
Convertible Bonds due in U. S. in 1875	172,800 00	
Certificates of debt due in U. S. in 1857	1,606 32	
Certificates of debt due in U. S. in 1869	264,979 40	
Certificates of debt due in U. S. in 1879	138,653 20	$ 656,372 25
Debts due by the Company by notes and open accounts:		
Debts due in open account.	70,042 60	
Unpaid dividends and interest on certifs. of Debt.	67,699 33	
Bills payable	914 22	$ 142,656 15
Profit & Loss:		
Receipts from transportation since commencement of work to March 31, 1863	$6,030,769 87	

From Thirtieth Annual Meeting of the Stockholders of the R., F. & P. R. R. Company—held May 27, 1863—on file in office of the Paymaster R., F. & P. R. R. Company, Richmond, Va., in book marked "Annual Reports R., F. & P. R. R. Co., 1852-1873" (pages 536 and 537).

Rents of real estate since commencement of work to March 31, 1863	6,340 62	
Petersburg Omnibus Account	4272 52	
Dividends from Potomac Steamboat Co.	83,385 00	
	$6,124,768 01	
Expenses of transportation from commencement of the work to March 31, 1863, including loss of bridges and depot by fire, interest, interest on certificates of debt and new stock, allowance to Washington & Fredericksburg Steamboat Co., and difference of exchange in settlement of bonds due in London in 1862	$3,939,383 91	
	$2,185,384 10	
Dividends paid since the commencement of the work to March 31, 1863.	$1,233,223 24	$ 952,160 86
		$2,894,089 26

DEFENDANT'S EXHIBIT No. 2—1863

Page No. 5.

Sub-Sheet 2.

Class B.

Hillman Exhibit 2.
Defendant Exhibit 2.
Subsheet 2.
(Corresponds with Exhibit 2, Subsheet 2, Jan. 1, 1861.)

CLASS B—1863

STATE OF WEST VIRGINIA.

Statement of the affairs of the Richmond, Fredericksburg & Potomac R. R. Company from the commencement of the work to the 31st of March, 1864.

Assets.		
Cost of Road & Property:		
From Richmond to Acquia Creek	$1,533,662 44	
Cost of new superstructure, heavy iron, etc.	563,649 47	
Engineering expenses to Manassas & Quantico	2,321 87	

Liabilities.		
Capital Stock:		
Subscribed by the State, 2,752 shares old stock	$ 275,200 00	
Subscribed by individuals		
4,248 shares old stock	424,800 00	
3,000 shares new stock	300,000 00	
1,429 shares gtd. stock	142,900 00	$1,142,900 00

DEFENDANT'S EXHIBIT No. 2—1863.

(Sub-Sheet 2—Continued.)

Property conveyed by E. Robinson	148,308 13	$2,247,941 91
Debts due to the Company:		
From individuals on new stock	1,820 00	
From bills receivable	10,118 13	
From C. S. for transportation.	69,991 61	
From C. S. for reconstruction of bridges destroyed	22,422 67	
From sundries in open account	130,040 81	$ 234,393 22
Investments:		
Stock of this Company	4,009 00	
Cotton	6,958 00	
Postage Stamps	2,390 00	
Five Dollar Notes	10,750 00	
Specie bought to purchase supplies with		
$500 (?) in Gold at $30 for $1 (1) $15,000 00		
$5.02 in Silver at $22 for 1$ (?) 110 14	15,110 14	
Potomac Steamboat Co. Stock	38,900 00	
Seaboard & Roanoke R. R. Stock	24,616 94	
Confederate State Bonds (4%)	500 00	
Debts due by the Company of a permanent nature:		
Coupon Bonds Conv't'le. due in C. S. '75	21,000 00	
Coupon Bonds due in London in 1875	57,333 33	
Convertible Bonds due in C. S. in 1875	172,800 00	
Certificates of Debt due in C. S. in 1857	1,564 32	....
Certificates of Debt due in C. S. in 1869	181,011 90	
Certificates of Debt due in C. S. in 1879	98,599 20	$ 532,308 75
Debts due by the Company by notes and open account:		
Debts due in open account.	72,802 47	
Unpaid Dividends and interest on Certificates of Debt	170,658 22	
Bills payable	914 22	$ 244,374 91
Profit and Loss:		
Receipts from transportation since commencement of work to March 31, 1864		$6,737,205 25

DEFENDANT'S EXHIBIT No. 2—1863.

(Sub-Sheet 2—Continued.)

Confederate States Bonds (8%)	60,000 00	
Confederate States Bonds (Cotton Int.)	272,500 00	435,734 38
Cash:		
On hand March 31, 1864	251 07	251 07
Total	$2,918,320 58	

Taken from Report of 31st Annual Meeting of the Stockholders of the R., F. & P. R. R. Company—held June 1, 1864—on file in office of the Paymaster R., F. & P. R. R. Company, Richmond, Va., in book marked "Annual Reports, R., F. & P. R. R. Co., 1852-1873." (Not paged and written by hand.)

Rents of real estate since commencement of work to March 31, 1864		6,380 62
Petersburg Omnibus Account		4,272 52
Dividends from Potomac Steamboat Co.		83,385 00
Profit on Confederate States Bonds		24,653 86
Received of Va. Cent'l. R. R. on a/c decree of Circuit Ct. of City of Richmond v. that Co. & O. & A. R. R. Co.		68,069 63
Rec'd of Orange & Alexandria R. R. on a/c decree of Circuit Ct. of City of Richmond v. that Co. & Va. Central	79,015 00	
	$147,084 73	
Less fees paid counsel	11,450 00	135,634 73
		$6,991,531 98

DEFENDANT'S EXHIBIT No. 2—1863.

(*Sub-Sheet* 2—*Continued.*)

Off expenses of Transp. since Com. to Mar. 31/64, including, &c.	4,474,944 12	
	$2,516,587 86	
Dividends paid since the Com. to March 31/64 ..	1,517,850 94	998,736 92
		$2,918,320 58

DEFENDANT'S EXHIBIT No. 2—1863.
Sub-Sheet 3.

Page No. 6.

Class B.

Hillman Exhibit 2.
Defendant Exhibit 2.
Subsheet 3.
(Corresponds with Exhibit 2, Subsheet 3, Jan. 1, 1861.)

CLASS B—1863

[103]

STATE OF WEST VIRGINIA.

Statement of the affairs of the Richmond, Fredericksburg & Potomac R. R. Company from the commencement of the work to the 30th of September, 1864.

Assets.			Liabilities.		
Cost of Road & Property:			Capital Stock:		
From Richmond to Acquia Creek	$1,533,662 44		Subscribed by the State, 2,752 shares old stock	$ 275,200 00	
Cost of new superstructure, heavy iron, etc.	563,649 47		Subscribed by individuals, 4,248 shares old stock	424,800 00	
Engineering expenses to Manassas & Quantico	2,321 87		3,000 shares new stock	300,000 00	
Cost of Negro Man	3,005 00		1,429 shares gtd. stock	142,900 00	$1,142,900 00
Property conveyed by E. Robinson	148,308 13	$2,250,946 91	Debts due by the Company of a permanent nature: Coupon Bonds Conv't'le., due in C. S. '75	21,000 00	

DEFENDANT'S EXHIBIT No. 2—1863—Page No. 6.

(Sub-Sheet 3—Continued)

Debts due to the Company:		
From individuals on new stock	1,820 00	
From bills receivable	10,118 13	
From Confederate States for transportation	166,153 12	
From Confederate States for reconstruction of bridges destroyed in 1862	22,422 67	
From sundries in open account	65,728 81	266,242 73
Investments:		
Stock of this Company, 291 shares	21,602 00	
C. S. 8% Bonds (Registered)	47,000 00	
C. S. Cotton Int. Bonds (Coupon)	272,500 00	
C. S. Cotton Int. Coupons	40,725 00	
C. S. Call Certificates 4%	35,500 00	
Potomac Steamboat Co. Stock	38,900 00	
Seaboard & Roanoke R. R. Stock	42,209 94	
Specie	110 44	
Supplies Imported	41,755 53	540,302 91
Cash:		
On hand Sept. 30, 1864	37,061 41	37,061 41
		$3,094,553 96

Coupon Bonds due in London in 1875	57,333 33	
Convertible Bonds due in C. S. in 1875	172,800 00	
Certificates of Debt due in C. S. in 1857	1,564 32	
Certificates of Debt due in C .S. in 1869	181,011 90	
Certificates of Debt due in C. S. in 1879	98,599 20	532,308 75
Debts due by the Company by notes and open accounts:		
Unpaid dividends & interest on Certificates of Debt	170,931 83	
Debts due on open accounts	86,510 73	
Bills payable	914 22	258,356 78
Profit & Loss:		
Receipts from transportation since commencement of work to Sept. 30, 1864.	7,229,885 40	
Rents of real estate since commencement of work to Sept. 30, 1864	6,405 62	
Dividends from Potomac Steamboat Co.	83,385 06	
Petersburg Omnibus Account	4,272 52	

CLASS B—1863

(Sub-Sheet 3—Continued)

From 32nd Annual Meeting of the Stockholders of the R F. & P. R. R. Company—held Nov. 16, 1864—on file in office of the Paymaster R., F. & P. R. R. Company, Richmond, Va., in book marked "Annual Reports, R., F. & P. R. R. Co., 1852-1873" (not paged—written by hand).

Received from Va. Central and Orange & Alexandria R. R. Companies on a/c decree, &c.	135,634 73	
Profit on C. S. Bonds sold..	24,609 31	
	7,484,192 58	
Expenses of transportation since commencement of work to Sept. 30, 1864, including loss of bridges and depot by fire, interest, interest on certificates of debt and new stock, allowance to Washington & Fredericksburg Steamboat Co., and difference of exchange in settlement of bonds due in London in 1862	4,770,556 31	
	2,713,636 27	
Dividends paid since the commencement of the work to Sept. 30, 1864...	1,552,647 84	1,160,988 43
		$3,094,553 96

CLASS B—1863

DEFENDANT'S EXHIBIT No. 3—1863.

Class C.

Page No. 7.

Hillman Exhibit 3-A.
Defendant Exhibit 3-A.
(Corresponds with Exhibit 3-A, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Recapitulation of Schedule "C" Assets. Results of Revision of Schedule "C" by Hillman.

	Par.	Face Value.	Book Value.		Value June 20, 1863.	Disposed of For.
1. Orange & Alexandria R. R. Stock	$ 874,500 00		$134 25		$1,140,566 62	$ 874,500 00
Loan		$ 377,772 65		June 23/63	377,772 65	377,772 65
2. Richmond & Danville R. R. Co. Stock	1,188,598 50		162 27		1,928,738 79	1,085,636 57
Loan		544,861 46			544,861 46	438,900 00
3. Richmond & Petersburg R. R. Co. Stock	385,600 00		141 24		544,621 44	578,404 13
4. Virginia Central R. R. Co. Stock	2,013,987 52		164 61		3,315,224 86	(Incl. Interest) 241,858 50
Loan		210,000 00			210,000 00	210,076 60
Dividend Bonds		58,650 00			58,650 00	58,650 00
5. Blue Ridge R. R. (built by State of Va.)	1,674,723 23				1,674,723 23	625,348 03
6. Alexandria, Loudoun & Hampshire R. R. Co. Stock	1,017,248 00				1,017,248 00	50,862 40

DEFENDANT'S EXHIBIT No. 3—1863.

(*Continued*)

Page No. 7.

7. Winchester & Potomac R. R. Co. Loan		83,333 33	83,333 33	83,333 33
8. Virginia & Tennessee R. R. Co. Loan		800,000 00	800,000 00	686,685 00
9. South Side R. R. Co. Loan		800,000 00	800,000 00	(Turned over to A. M. & O.)
10. Norfolk & Petersburg R. R. Co. Loan		300,000 00	137,000 00	137,000 00
Stock	1,199,970 00			(Turned over to A. M. & O.)
11. Roanoke Navigation Co. Stock	80,000 00		80,000 00	3,832 00
12 Alexandria Canal Co. Stock	272,000 00		272,000 00	764 47
13 Upper Appomattox Co. Stock	56,500 00		56,500 00	16,144 26
14. Dismal Swamp Canal Co. Stock	190,000 00		190,000 00	9,935 99
15. Loan to Washington College			2,000 00	2,000 00
16. Richmond Academy Bonds		2,000 00	400 00	400 00
17. Claim against U. S. Government	400 00		298,369 74	298,369 74
18. Claim against Selden, Withers & Company		298,369 74		
19. Richmond, Fredericksburg & Potomac R. R. Co.		?	132,842 74	132,842 74
Dividend Bonds		122,464 00	122,464 00	122,464 00
20. Manassas Gap R. R. Co.		2,280,000 00	2,280,000 00	
			$16,067,316 86	$6,035,780 46

DEFENDANT'S EXHIBIT No. 3—1863—Asset 1.

Class C.

Hillman Exhibit 3-A.
Defendant Exhibit 3-A. Asset 1.
(Corresponds with Exhibit 3 A-1.
Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing Profit & Loss of the Orange & Alexandria Railroad Company to determine the value of said stock on ope ning of business Sept. 30, 1863.

	Par of Stock.	Profit.	Add Profits.	Profits to Date.	Book Value.
1. Orange & Alexandria R. R. Co.					
1860 Stock	$2,039,603 73	$ 28,242 34	$ 28,242 34	$135,515 49	$106 64
1861 Stock	2,058,007 07	263,909 85	As reported by the Supt. all records were in Alexandria and as the war was on he could only guess at the operating expenses; therefore, the above statement is valueless. Earnings had increased 33% and his operating expenses $220,000.00. The value of Sept. 30, 1860, is, therefore, taken as the measure of its worth.		
1862 Stock	2,057,813 01	333,680 49	333,680 49	469,195 98	122 80
1863 Stock	2,058,794 30	236,538 57	236,538 57	705,296 40	134 25

This road did not declare any dividends during the years 1862 and 1863, hence the accumulations of profits.

(*Continued*)

Profits for the year 1862 have been added to total profits which had accumulated up to 1860, the profits for 1861 have not been considered, else the value of this stock would be greater than shown for 1863.

In 1863 the debt is in bills payable to a great extent, all of which have matured. Also coupons on different issues of bonds, interest on preferred stock and dividend script. The company now has means to liquidate all its indebtedness of this nature, but the parties holding the debt cannot be reached.

This statement is compiled from a report to the Board of Public Works of the State of Virginia, Document 15, pages 7 to 24, for 1862, and 25 to 39 for 1863, in a book labeled Documents, 1863-1864, on file in Washington, D. C., and sworn to by J. H. Reed, Treasurer, and H. W. Vandegrift, General Superintendent.

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-1, D-1. 3 Sheets.

Class C
Class D.
Sheet 1.

Defendant Exhibit 3 & 4.
Hillman Exhibit 3 & 4.
Asset C-1.
Asset D-1.
(Corresponds with Exhibit 3 & 4.
Asset C-1 & D-1, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Settlement of the Orange & Alexandria R. R. Stock & Bonds.

		Cost.	Par as Per Settlement.	
A.	STOCK—Ledger "B," Internal Improvement Fund, Folio 183, shows that the State of Virginia owned on June 20, 1863, stock of the O. & A. R. Co. to the value of	$ 872,802 83	$ 874,500 00	
	Dividend 1854, paid in 1864			$ 31,604 09
	Page 157, Journal "D," Department Public Works,			
	Page 157, Journal "D," Department Public Works, ($34,912 00 doubtful).			
B.	LOAN—Ledger "B," Folio 241, Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia owned the face value of a loan to the Orange & Alexandria R. R. Co. of	400,000 00	400,000 00	

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-1, D-1. 3 Sheets.

(Continued)

Following details from pages 389-392, Journal "N," Public Works (Internal Improvement, now known as Public Works):			
Interest to Feb. 23, 1859	6,075 31		
Paid Feb. 11, 1859	5,250 00	825 31	
		400,825 31	
Paid Feb. 23, 1859		2,154 71	
		$398,670 60	
Interest to Sept. 15, 1859	10,415 94		
Paid Sept. 15, 1859	9,086 61		
Unpaid interest	1,329 33	1,329 33	
Interest to April 17, 1860	14,019 00		
Paid April 17, 1860	9,840 47		
Unpaid interest		4,178 53	
Interest to July 1, 1860	5,035 18		
Cash to July 1	4,159 53		
		875 65	
Loan and over interest to July 1, 1860		$ 405,054 11	$ 405,054 11
Add interest on $398,670.60 for six months at 7% per annum—3½			13,953 47
Total due on loan interest 1/1/61			$419,007 58

Above three lines inserted to show amount due from January 1, 1861 on loan.

CLASSES C & D—1863

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-1, D-1. 3 Sheets.

(*Continued*)

Class C.
Class D.
Sheet 2.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C. 1.
Asset D. 1.
(Corresponds with Exhibit 3 & 4, Asset C. 1. & D. 1. Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Settlement of the Orange & Alexandria R. R. Stock & Bonds.

	Payments.	Charges.	Amt. Due June 23/63.
Brought forward from Sheet 1		$ 405,054 11	
Interest to Oct. 20, 1862		$ 54,934 61	
Paid Oct. 20, 1862	$ 10,071 00		
Interest to Oct. 25, 1862		327 67	
Paid Oct. 25, 1862	20,000 00		
Interest to Nov. 15, 1862		1,376 23	
Paid Nov. 15, 1862	23,000 00		
Interest to Dec. 29, 1862		2,321 02	
Paid Dec. 29, 1862	16,929 00		
Interest to Jan. 28, 1863		2,474 51	
Paid Jan. 28, 1863	14,000 00		
Interest to June 23, 1863		9,284 50	
			$ 377,772 65

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-1, D-1. 3 Sheets.

(Concluded.)

Paid June 23, 1863	14,000 00	
Interest to Jan. 16, 1864		12,823 56
Paid Jan. 16, 1864	14,000 00	
Interest to Sept. 8, 1864		14,604 90
Paid Sept. 8, 1864	14,000 00	
Interest to Dec. 31, 1864		7,072 78
Paid Dec. 31, 1864	14,000 00	
Interest to Jan. 1, 1865		60 86
Paid in State Bonds & Int.	150,037 73	
Interest to Aug. 20, 1868		48,269 22
Paid Aug. 26, 1868	20,000 00	
Interest to Nov. 1, 1868		2,420 23
Paid Nov. 1, 1868, in State Bonds & Int.	38,141 53	
	$ 348,179 26	$ 561,024 20
Deduct payments		348,179 26
Balance of Loan		$ 212,844 94

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-1, D-1. 3 Sheets.

Page No. 11.

Class C.
Class D.
Sheet 3.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C. 1.
Asset D. 1.
(Corresponds with Exhibit 3 & 4, Asset C. 1. & D. 1. Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Settlement of the Orange & Alexandria R. R. Stock & Bonds.

	Payments.	Charges.	
Final Settlement of Loan & Stock, pages 407-10, Journal "N."			
Balance of Loan		$ 212,844 94	
Int. to March 29, 1872		43,510 92	
Int. to Oct. 17, 1872		7,050 11	
Total Loan to Oct. 17, 1872		$ 263,405 97	
Par of Stock		874,500 00	
Total Outstanding Loan & Stock		$1,137,905 97	
Paid as follows:			
Mar. 28, 1872 as 1/6 of above to Mar. 28, $1,130,855 86—			
Bonds	$ 188,478 29		included in bonds turned in below
Oct. 17, 1872, Discount for anticipation of intallments—			
Page 180, Journal "D"			
No. 2	$ 4,956 11		
No. 3	15,165 67		

(*Continued*)

No. 4	24,306 94
No. 5	32,539 22
No. 6	39,991 68
Oct. 28, 1872, State Bonds	834,398 88
Int. on Bonds	186,548 49
	$1,137,906 99

B.—$1.02 over, being 5c in discounts and an overpayment of 97c.

DEFENDANT'S EXHIBIT No. 3—1863—Asset No. 2.

Page No. 12.

Class C.

Hillman Exhibit 3-A.
Defendant's Exhibit 3-A.
Asset 2.
(Corresponds with Exhibit 3-A-2.
Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing Profit & Loss of the Richmond & Danville Railroad Company to determine the value of said stock on opening of business Sept. 30, 1863.

Richmond & Danville R. R. Co. Stock.	Par of Stocks	Profit.	Add Profits.	Profits to date.	Book Value.
1861 Stock	$1,981,297 50	$ 156,688 24	$ 77,436 34	$ 817,859 14	$141 28
Less Dividends		79,251 90			
1862 Stock	1,981,297 50	321,492 62	182,801 80	1,000,660 94	150 55
Less Dividends		138,690 82			
*1863 Stock	1,981,297 50	451,110 34	233,167 62	1,233,828 56	162 27
Less Dividends		217,942 72			

*No Floating debt in this year:

Statement taken from report to Board of Public Works, 1863-1864, Document 15, pages 127-144, for 1862, State of Virginia, sworn to by J. D. Blair, Auditor, and Charles E. Talcott, Supt., Feb. 7, 1863, on file in Washington, D. C., for 1863, pages 145-161.

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-2, D-2.

Page No. 13.

Class C. Hillman Exhibit 3 & 4.
Class D. Defendant Exhibit 3 & 4.
Sheet 1.

Asset C. 2.
Asset D. 2.
(Corresponds with Exhibit 3 & 4, Asset C. 2 & D. 2, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Richmond and Danville Railroad.

	Cost Price.	Disposed of For
A. STOCK.		
Ledger B, Folio 183, Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia owned stock in this company to the value of	$1,188,598 50	
This stock was disposed of as follows:		
Journal "N," Board Public Works, on file in Corporation Commission Office, Folio 311—		
Dec. 13, 1870—First payment:		
Old Registered Bonds		$ 58,200 00
Interest Funded Debt, Jan., 1866		13,377 41
Interest Funded Debt., Jan., 1867		18,583 00
Interest on above		9,915 37
Journal "N," Folio 348, Aug. 31, 1871:		
Coupon Bonds		38,500 00
Interest		12,705 00
Registered Stock		460,017 98
Interest		13,800 53
Registered Bonds, 1866		187,474 51
Interest		61,866 58
Registered Bonds, 1867		126,424 95
Interest		34,134 74
FINAL PAYMENT.		
On decision of Circuit Court of Richmond, this company made final settlement for stock as follows:		
Reference:		
Decree of Circuit Court of Richmond, April 13, 1877, to pay balance amounting to $26,571.46, with interest from August 31, 1871.		

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-2, D-2.

(*Continued.*)

Journal "O," Board Public Works, June 30, 1886:	
State Bonds	38,100 00
Coupons	691 50
Journal "O," Board Public Works, Dec. 20, 1886:	
State Bonds	11,500 00
Coupons	345 00
	$1,085,636 57

The same being $26,571.46, principal, and $24,065.04, interest, as per above decree.

The principal and interest due on the preceding payment amounted to $11,771.42, and the excess, $73.58, was paid in order that the R. & D. could make the payment in bonds.

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-2, D-2.

Page No. 14.

Class C. Hillman Exhibit 3 & 4.
Class D. Defendant Exhibit 3 & 4.
Sheet 2. Asset C. 2.
Asset D. 2.
(Corresponds with Exhibit 3 & 4, Asset C. 2 & D. 2., Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Richmond and Danville Railroad.

		Value June 20, 1863.
B. LOAN.		
Ledger "B," Folio 240, Internal Improvement Fund, shows the value of this loan to the State of Virginia, as of June 20, 1863, to be	$ 600,000 00	
Due to the partial payment plan, by which this loan was computed, as shown by page 12, Senate Document, and Journal No. 12, 1881 and 1882, its value on Sept. 30, 1862, was	551,444 95	
Following this plan, we arrive at a balance on June 20, 1863, as follows:		
Interest from Sept. 30, to June 20, 1863	23,749 84	
	575,194 97	
Less 8 months and 20 days of an annual annuity of $42,000.00	30,333 33	
The value of this loan, June 20, 1863, was		$ 544,861 46
Loan was finally disposed of as follows, having been reduced by the partial payment plan used above, and including interest, to $438,900.00.		
Journal "N," Board Public Works, Folio 631, July 1, 1882:		
First payment—		
Coupon Bond	$ 282,000 00	
Fractional Certificates	10,436 41	

Page No. 14.

(*Continued*)

Record Book, Sinking Fund, Second Auditor, Folio, 285, July 8, 1884:		
Bonds	15,700	00
Fractional Certificates	166	37
Cash		55
Journal "N," Board Public Works, Folio 632, Sept. 28, 1882:		
State Bonds	38,500	00
Fractional Certificates	13	76
Folio 635:		
Bonds	91,996	00
Fractional Certificates	86	91
	$ 438,900	00

Class C.

Hillman Exhibit 3-A.
Defendant's Exhibit 3-A.
Asset 3.
(Corresponds with Exhibit 3-A3.)

STATE OF WEST VIRGINIA.

Statement showing Profit & Loss of the Richmond & Petersburg Railroad Company to determine the value of said stock on opening of business Sept. 30, 1863.

Richmond & Petersburg R. R. Co.	Par of Stock.	Profit.	Add Profits.	Profits to date.	Book Value.
1861 Stock	$ 835,750 00	$ 55,616 33	$ 6,736 33	$ 189,433 32	$122 66
Less Dividends		48,880 00			

1862 No report could be found for this date and it is believed that no report was rendered for this year. In making computation for the year 1863, interest on floating debt and funded debt of 1861 and dividends declared in 1862, have been deducted from profits for 1863, in addition to the same deduction applicable in 1863, although profits (not ascertainable) have not been considered. It would appear, therefore, that these stocks are of greater value than that set forth herein.

1863 Stock	$ 837,750 00	$ 353,480 00	$ 156,090 35	$ 345,523 67	$141 24
Less Dividends		197,389 78			

This statement is compiled from figures contained in a report to the Board of Public Works of Virginia, Document 15, pages 193 to 208, on file in Washington, D. C., in a book labeled Documents, 1863-1864, and is sworn to by J. H. Reed, Treasurer, and E. H. Gill, Superintendent.

CLASS C 1863.

DEFENDANT'S EXHIBIT No. 3—1863—Asset No. 3.

Page No. 16

Class C.
Class D.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset 3 C.
Asset 3 D.
(Corresponds with Exhibit 3 & 4, Asset 3 C. & 3 D. Jan. 1, 1861)

STATE OF WEST VIRGINIA.

Richmond & Petersburg Railroad.
Disposal of Securities of that Company owned by the Commonwealth of Virginia.

	Cost.	Settlement.	Payment.
D. Dividend on Stock—			
Semi-annual Dividends due June 30, 1863, paid July 31, 1863, as per folio 148, Journal "D," Internal Im'pt. Fund, to the amount of $23,136.00.		$ 21,857 80	
This sum, proportioned to June 20, 1863, amounts to..			
C. Stock—			
Folio 184, Ledger "B," Int. Imp. Fund, shows that in June 20, 1863, the State of Virginia held stock in this Railroad to the extent of	$ 385,600 00		
C. Stock—			
Sold @ 150 and paid for as follows:			
Pages 351-2 Journal "N," Internal Im'pt. Fund.....		$ 578,400 00	
Paid Mar. 8, 1871			$ 100,000 00
Paid July 13, 1871			3,037 50
Interest on same to July 1, 1871			525 93

(Continued)

Paid July 13, 1871	$ 384,172 29
Interest on same to July 1, 1871	46,165 65
Paid July 20, 1871	7,150 00
Paid Aug. 4, 1871	21,278 09
Interest to July 1, 1871	449 45
Paid Sept. 6, 1871	12,625 40
Paid Sept. 6, 1871	*3,000 00
	$ 578,404 13
Total Bonds, Dividend and Stock	$ 621,472 13

*Balance due Sept. 6, 1871, $2,995.87, was secured by State Bonds for $3,000.00, which were forfeited to the State, thus creating excess of $4.13—See Journal "N," pages 351 and 352, Internal Im'pt. Fund.

DEFENDANT'S EXHIBIT No. 3—1863—Asset 4.

Class C.

Hillman Exhibit 3-A.
Defendant Exhibit 3-A.
Asset 4.
(Corresponds with Exhibit 3 A-4, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing Profit & Loss of the Virginia Central Railroad Company to determine the value of said stock on opening of business Sept. 30, 1863.

Virginia Central R. R. Co.	Par of Stock.	Profit.	Add Profits.	Profits to date.	Book Value.
1861 Stock	$3,292,444 73	$ 276,319 91	$ 263,646 41	$1,249,208 86	$137 94
Less Dividends		12,673 50			
1862 Stock	3,303,193 98	585,979 41	493,399 56	1,742,608 42	152 75
Less Dividends		92,579 85			
1863 Stock	3,356,735 99	661,204 44	426,232 93	2,168,841 35	164 61
Less Dividends		234,971 51			

This report is compiled from figures obtained from a report to the Board of Public Works, State of Virginia, Document 15, pages (41 to 64 for 1862 and '65 to 85 for 1863), and sworn to by J. Garrett, Treasurer, and H. D. Whitcomb, General Supt. The report is in file in Washington, D. C.

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-4.

Page No. 18.

Sheet 1.
Class C.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C. 4.
(Corresponds with Exhibit 3 & 4, Asset C. 4, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Virginia Central Railroad Company—Stock.

A. STOCK.	Book Value.	Disposed of For.
Folio 185, Ledger "B," Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia held stock of the Virginia Central Railroad Co. to the value of	$2,013,987 52	
This stock was disposed of on various dates and in quantities and prices shown below:		
Journal "O," Board of Public Works:		
Folio 129, Aug. 15, 1888, 17,622 39/100 shares		$ 25,500 00
Folio 157, Jan. 7, 1890, 100 shares at $26.75		2,675 00
Folio 157, Jan. 9, 1890, 1,200 shares at $26.75		32,100 00
Folio 157, Jan. 10, 1890, 200 shares at $26.75		5,350 00
Folio 157, Jan. 27, 1890, 800 shares at $26.75		21,400 00
Folio 158, Feb. 10, 1890, 200 shares at $25.00		5,000 00
Folio 158, Feb. 10, 1890, 400 shares at $24.75		9,900 00
Folio 158, Feb. 10, 1890, 100 shares at $24.50		2,450 00
Folio 158, Feb. 10, 1890, 200 shares at $24.37½		4,875 00
Folio 158, Feb. 10, 1890, 300 shares at $23.87½		7,162 50
Folio 158, Feb. 10, 1890, 1,000 shares at $23.75		23,750 00
Folio 158, Feb. 10, 1890, 1,200 shares at $23.50		28,200 00
Folio 158, Feb. 10, 1890, 1,200 shares at $23.75		28,500 00
Folio 158, Feb. 11, 1890, 800 shares at $23.75		19,000 00

Folio 158, Feb. 11, 1890, 100 shares at $23.62½	2,362 50
Folio 158, Feb. 11, 1890, 411 shares at $23.50	9,658 50
Folio 158, Feb. 11, 1890, 200 shares at $23.37½	4,675 00
Folio 158, Feb. 11, 1890, 400 shares at $23.25	9,300 00
Total—26,433 39/100 shares...	$241,858 50

The total amount received for the stock was received into the Treasury as per Cash Book Second Auditor, Aug. 20, 1888	$ 25,500 00
Cash Book Second Auditor, Feb. 12, 1890	216,358 50
	$241,858 50

Sheet 2.
Class C.
Class D.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C. 4.
Asset D. 4.
(Corresponds with Exhibit 3 & 4,
Asset 4-C & 4-D, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Virginia Central Railroad Co.

		Amount due.	Disposed of for
B—LOAN—			
Folio 241, Ledger B, Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia held a loan issued to the Virginia Central R. R. Co., whose face value was.....	$ 210,000 00		
Interest which accrued on this loan from January 1, 1863, to July 1, 1863, amounting to $7,350.00, was paid subsequent to July 1, 1863, as per cash book 10, B. P. W., Second Auditor's Office, July 21, 1863. Proportioning same on time basis to June 20, 1863....		$ 6,903 33	
The above loan was bought by the Chesapeake & Ohio R. R. Co, as shown by, statement on file, in file room of the Corporation Commission, dated July 1, 1870, who paid in bonds and interest..			$ 210,076 60
Confirmation of sale and receipt of money is shown in the report of the Second Auditor in the year 1871.			

(Continued)

C—DIVIDEND BONDS—			
Folio 280, Ledger B, Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia owned dividend bonds of the Virginia Central R. R. to the value of	58,650 00		
which was disposed of as follows:			58,650 00
File box, Corporation Commission, Aug. 25, 1870.			
Interest which accrued on this loan from Oct. 15, 1862, to Oct. 15, 1863, amounting to $3,519.00, was paid subsequent to Oct. 15, 1862, as per cash book 10, B. P. W., Second Auditor's Office, Nov. 3, 1863. Proportioning same on time basis to June 20, 1863..		2,390 99	2,390 99
			$ 61,040 99

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-5, Asset D-20.

Page No. 20.

Class C. Hillman Exhibit 3 & 4.
Class D. Defendant Exhibit 3 & 4.
Asset C-5.
Asset D-20.
(Corresponds with Exhibit 3 & 4, Asset C-5 & D-20, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Blue Ridge Railroad.

(*Built by the State of Virginia and sold April* 1, 1870, *to the Chesapeake & Ohio R. R. Co.*)

	Cost.	Disposed of For.
Cost of Construction, June 20, 1863 (Folio 187, Ledger "B," Internal Impt. Fund.)	$1,674,723 23	
Amount invested in road after June 20, 1863, was $20,147.62, all of which was allowed to the Virginia Central R. R., which was to do the work, as a credit on their toll account, and which amount was in addition to the tolls mentioned below		
This road was sold by the State of Virginia April 1, 1870, as shown by Folio 171, Journal "D," Internal Improvement Fund, and was paid for as follows:		
Bonds		$ 574,921 48
Interest on same		50,417 64
Check		8 96
		$ 625,348 08
Tolls which had accrued prior to July 1, 1863 (for the quarter ended that date), were received subsequent to that date, and the portion of these tolls to June 20, 1863, is a proper claim.		
March 2, 1864, Cash Book No. 10, Board of Public Works, shows a receipt of $6,576.50 for the period mentioned.		
This sum proportioned to June 20, 1863, is.....		5,853 81
Total received		$ 631,201 89

Subsequently there was received the following tolls from the Virginia Central, which may or may not be considered as part of the purchase price. My judgment is may not.

March 31, 1864, Cash Book No. 10, B. P. W., $64,984.49.

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-6.

Page No. 21.

Class C.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C-6.
(Corresponds with Exhibit 3 & 4, Asset C-6, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Alexandria, Loudoun & Hampshire Railroad.

		Amount Received.
STOCK.		
Ledger "B," Folio 181, Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia held stock in the Alexandria, Loudoun & Hampshire R. R. to the value of	$1,017,248 00	
This stock was disposed of at $5 per share for a total of $50,862.40, which was paid for with three notes of $16,954.13 each, dated Nov. 25, 1867, for 5, 7 and 10 years, respectively		$ 50,862 40
These notes were paid, with interest, as per the following references:		
May 17, 1872, page 397, Journal "N," B. P. W.— First payment	$ 1,500 00	
March 19, 1873, page 435, Journal "N," B. P. W.— Second payment	3,000 00	
June 5, 1883, page 641, Journal "N," B. P. W.— Third payment	65,188 71	
	$69,688 71	

The difference between the amount actually paid and the face of the notes ($18,826.31) represents the interest on notes.

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-7.

Page No. 22.

Class C.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C-7.
(Corresponds with Exhibit 3 & 4, Asset C-7 & D-5, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Winchester & Potomac Railroad.

		Disposed of For.
A. LOAN.		
Folio 241, Ledger "B," Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia held the face value of a loan to the Winchester & Potomac R. R. Co., amounting to.....	$ 83,333 33	
This loan was disposed of as follows:		
Folio 175, Journal "D," Internal Improvement Fund, under date of Sept. 30, 1873, shows that the Treasurer of the Commonwealth of Virginia received in full settlement of this loan.....		$ 83,333 33

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-8, D-7. Page No. 23.

Class C.
Class D.
Sheet 1.

Hillman Exhibit 3 & 4.
Asset C-8.
Asset D-7.
(Corresponds with Exhibit 3 & 4, Asset C-8 & D-9, Jan. 1, 1861.

STATE OF WEST VIRGINIA.

Virginia & Tennessee Railroad Co.

Statement of Loans and Interest on Same which was Unpaid June 20, 1863, and subsequent payments thereon.

		Amount Due.	Due Subsequent to June 20, 1863.
Interest on loan of $1,000,000.00, Folio 255, Ledger "B," Internal Improvement Fund shows on March 31, 1863 (N. B. Postings are quarterly, but the Journal date of this entry is also March 31, 1863), debits to this interest account of	$ 647,584 12		
Add interest to June 20, 1863	15,469 61		
Total interest accrued to June 20, 1863	$ 663,053 73		
Same page shows payments on account of above interest, credits to interest account	647,584 12		
Leaving a balance due on June 20, 1863, of		$ 15,469 61	
And Sept. 30, 1863, of			$ 19,530 39
Same page of ledger has on Sept. 30, 1863, this account in balance, $682,584.12, Debit and Credit, showing that all arrearages of interest were paid.			
Evidenced also by the following payments of back interest: Cash Book, No. 10, Board of Public Works, Second Auditor's Office, Aug. 15, 1863, shows a payment of	35,000 00		

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-8, D-7.

Page No. 24.

Class C. Hillman Exhibit 3 & 4.
Class D. Asset C. 8.
Sheet 2. Asset D. 7.
(Corresponds with Exhibit 3 & 4, Asset C. 8 & D. 7, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Virginia & Tennessee Railroad Co.

B. LOAN.	Face Value.	Disposed of For.
Folio 240, Ledger B, Internal Improvement Fund, shows that on Jan. 1, 1861, the State of Virginia held the face value of a loan to the Virginia & Tennessee R. R. Co. of	$1,000,000 00	
On June 19, 1863, there was paid to the State of Virginia by the V. & T. R. R. Co. on account of the redemption of this loan, as shown on Cash Book of Board of Public Works, No. 10, not paged	200,000 00	
Leaving the face value of this loan on June 20, 1863, of	800,000 00	
Subsequent to this date, the loan was further redeemed as follows:		
Cash Book, Sinking Fund (not paged),		
June 30, 1863		$ 300,000 00
August 6, 1863		100,000 00
August 7, 1863		100,000 00
September 11, 1863		186,685 00
		$ 686,685 00

This loan was never paid in full, but the unpaid balance was turned over to the A. M. & O., together with the other items of the South Side R. R., Virginia & Kentucky R. R. and the Norfolk & Petersburg R. R. for $4,000,000.00. (See Hillman Exhibit 6, Class F.)

If this loan had been worked out on the "partial payment" plan, as loans that were eventually settled in full, West Virginia would be entitled to take into consideration $37,237.14 more. (See Asset C. 8 and D. 7, Supplemental Answer.)

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-9, D-8.

Class C.
Class D.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset D-8.
Asset C-9.
(Corresponds with Exhibit 3 & 4, Asset D-8, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

South Side Railroad.

Interest on Loans due June 20, 1863, and paid subsequently.

	Face Value.	Amount Due.	Disposed Of For.
A—Loan—			
Folio 240, Ledger "B," Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia held the face value of a loan of $800,000.00 to the South Side Railroad Co.	$ 800,000 00		
B—Interest on Loan—			
Folio 254, Ledger "B," Internal Improvement Fund, shows interest due on above loan to March 31, 1863	$ 525,487 69		
Add interest to June 20, 1863	12,375 69		
Total due June 20, 1863	$ 537,863 38		
Same page of ledger shows that up to March 31, 1863 (last payment before June 20, 1863), the South Side Railroad Co. had paid on account of interest on this loan	329,487 69		

Leaving the amount due June 20, 1863		$ 208,375 69	
All of which was subsequently paid as same page, same ledger shows the account balanced as of Sept. 30, 1863.			
Cash Book, No. 10, not paged, Board of Public Works, shows payment of the above as follows:			
July 29, 1863			$ 56,000 00
Aug. 1, 1863			63,000 00
" 8, 1863			28,000 00
" 17, 1863			21,000 00
Sept. 16, 1863			28,000 00
Proportion of interest to June 20, 1863, of payment of $28,000.00, July 6, 1863, as per Cash Book No. 10, Board of Public Works			12,375 69
			$ 208,375 69
Note—Ledger B Folio 254, Internal Improvement Fund, shows that since March 31, 1863, the interest had increased $112,000.00, making a total of $637,487.69, due as of March, 31, 1865. Same page shows a credit of	$ 329,487 69		
And further credits as follows:			
Sept. 30, 1863	$ 224,000 00		
" " 1864	56,000 00		
Mch. 31, 1865	28,000 00		
Total Credits	$ 637,487 69		

The loan itself, Asset C. 9, was never paid. It was turned over with the Stock to the A. M. & O. Railroad with other roads for $4,000,000.00. See Hillman Exhibit 6, Class F, for the Va. & Tenn. R. R., South Side R. R., Va. & Kentucky R. R. and Norfolk & Petersburg R. R. If this loan had been figured on the "partial payment plan" that was used on loans which were eventually paid, West Va. would be entitled to take $32,000.00 more into consideration. (See figures in Assets D. 9 & C. 8, in Supplemental Answer.)

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-10, D-9.

Page No. 26.

Class C. Hillman Exhibit 3 & 4.
Class D. Defendant Exhibit 3 & 4.
Asset C-10.
Asset D-9.

(Corresponds with Hillman Exhibit 3 & 4, Assets C. 10 & D. 9., Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Norfolk & Petersburg Railroad—Stock and Loan.

			Amount Received.
A.	STOCK.		
	(Page 182, Ledger "B," Internal Improvement Fund)	$1,499,970 00	
	On Dec. 22, 1870, page 172, Journal "D," Improvement Fund, it was discovered that $300,000.00 of this amount was in shape of bonds or loans	300,000 00	
	Leaving book value of stock	1,199,970 00	
	consisting of the following shares, as shown on page 178, Journal "D," Internal Improvement Fund:		
	8,175 shares ordinary stock, par $100.	817,500 00	
	825 shares guaranteed 6% stock, par $100	382,500 00	
	3,000 shares preferred 7% stock, par $100	300,000 00	
	12,000 shares—total stock	$1,200,000 00	
	Dividends paid on above guaranteed stock	$82,500 00	
	Six months at 6%, Jan. 1, 1863, to July 1, 1863	2,475 00	
	(Page 149, Journal "D," Internal Improvement Fund)		
	Which proportioned to June 20, 1863		$ 2,324 52
	Stock was included in sale of four roads already mentioned to the A. M. & O. R. R. (See Hillman Ex. 6.		
	Interest on above named loan of $300,000.00, 4½ years, Jan. 1, 1859, to July 1, 1863, at 6%. Folio 158, Journal "D," Internal Improvement Fund. Paid Jan. 11, 1864, $94,500.00. Proportioned to June 20, 1863		93,866 57

Page No. 26. (*Continued*)

B. LOAN.

Page 179, Journal "D," Internal Improvement Fund, shows in the settlement, Dec. 22, 1870, when stocks and loans were turned over to the A. M. & O., that $163,000 of the $300,000 loan was yet outstanding, hence there must have been paid	137,000 00
	$ 233,191 09

N. B.—In a report to the Senate, Doc. 2, pages 19-20, 1874-5, by John O. Steger, and transmitted to Senate as an appendix to the governor's message, there is shown to have been paid on this loan $151,524.49, and the report further says that the book entries were missing and that he counted the bonds in many instances, and that report can be relied upon as very nearly, if not absolutely, accurate. I also am unable to locate any entries on this subject.

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-11.

Page No. 27.

Class C.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C-11.
(Corresponds with Exhibit 3 & 4, Asset C-11, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Roanoke Navigation Company—Stock.

STOCK.	Cost Price.	Disposed of For.
Folio 193, Ledger "B," Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia held stock in the Roanoke Navigation Company to the value of	$ 80,000 00	
This stock was disposed of, as evidenced on page 476 of the First Auditor's Day Book, Sept. 30, 1882, on a decree of court for		$ 3,832 00

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-12.

Page No. 28.

Class C.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C-12.
(Corresponds with Exhibit 3 & 4, Asset C-12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Alexandria Canal.

STOCK.	Cost Price.	Disposed of For.
Ledger "B," Internal Improvement Fund, Folio 191, shows that on June 20, 1863, the State of Virginia owned 2,720 shares of Alexandria Canal Co. stock, valued at..	$ 272,000 00	
This stock was disposed of July 1, 1887, as shown below.		
Record Book, Sinking Fund, Folio 394, July 1, 1887, 2,720 shares sold as follows at 30c per share:		
To City Council of Alex'ria 1,220 shares		$366 00
To George Mulbach..... 100 shares		30 00
To Frank Hume..... 600 shares		180 00
To H. H. Wells..... 500 shares		150 00
To A. A. Berney ..... 100 shares		30 00
To Frank Agnen..... 200 shares		60 00
Total .....2,720 shares		$816 00
Less expenses of sale for advertising, etc., as shown by same record.....		51 53
		$764 47

The Treasurer's Blotter for 1887-1888, Folio 5, shows the receipts July 1, 1887, on account this sale of $816.00.

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-13.

Page No. 29.

Class C.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C-13.
(Corresponds with Exhibit 3 & 4, Asset C-13, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Upper Appomattox Company—Stock.

STOCK.	Cost Price.	Disposed of For.
Ledger "B," Internal Improvement Fund, shows that on June 20, 1863, the State of Virginia held stock in this company to the value of	$ 56,500 00	
This stock was disposed of and amounts received for same by the State of Virginia as follows:		
Cash Book, Sinking Fund, page 31, Feb. 24, 1875		$ 3,000 00
Cash Book, Sinking Fund, page 48, Jan. 1881		2,280 00
Record Book, Sinking Fund, page 236, July 8, 1884:		
Coupon Bonds		10,500 00
Registered Bonds		300 00
Fractional Certificates		64 26
		$16,144 26

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-14.

Page No. 30.

Class C.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset C-14.
(Corresponds with Exhibit 3 & 4, Asset C-14, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Dismal Swamp Canal.

STOCK.—		Disposed of For.
Ledger "B," Internal Improvement Fund, Folio 191, shows that on June 20, 1863, the State of Virginia held stock in the Dismal Swamp Canal to the value of....	$ 190,000 00	
The State of Virginia sold the entire holding of stock (760 shares) as per Journal "N," Board of Public Works, pages 238 and 241, in 1868, for.....		$ 9,935 99

Note.—The amount received by the State of Virginia for this stock was subsequently invested in Virginia Bonds, as follows:

Principal	$24,839 98
Interest	5,961 59
Total	$30,801 57

which amount was turned over to the Sinking Fund July 31, 1874 (page 207, Record Book, Sinking Fund).

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-15, D-11.

Page No. 31.

Class C.
Class D.

Hillman Exhibit 3 & 4.
Asset C. 15.
Asset D-11.
(Corresponds with Exhibit 3 & 4, Asset C. 15, D. 11., Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Loan to Washington College.

LOAN.	Face Value.	Disposed of For.
On Jan. 1, 1861, the Ledger of the Literary Fund for that period, Folio 8, shows that the State of Virginia held the balance of an original loan of $4,000.00 to Washington College, amounting to....	2,000 00	
Interest on this loan, which had accrued prior to June 20, 1863, was paid and received by the State of Virginia as follows: Cash Book 5, Literary Fund, not paged, August 26, 1863. For interest due July 1, 1863, $60.00.		
This sum being proportioned to June 20, 1863, amounts to		$ 56 35
This loan was redeemed Jan. 1, 1896, as set forth below: Cash Book No. 1, New Series, Literary Fund, Folio 238—"Received of the President and Directors of Washington and Lee University (formerly Washington College) the balance of a loan of $4,000.00 made July 16, 1852, by the Board of the Literary Fund."...		2,000 00
		$2,056 35

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-16, D-12.

Page No. 32.

Class C. Hillman Exhibit 3 & 4.
Class D. Defendant Exhibit 3 & 4.
Asset C-16.
Asset D-12.
(Corresponds with Exhibit 3 & 4, Asset C-16 & D-12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Richmond Academy.

BONDS.	Face Value.	Disposed of For.
On June 20, 1863, the Ledger of the Literary Fund for that period, Folio 11, shows that the State of Virginia owned bonds of the Richmond Academy to the value of	$400 00	
Interest on these bonds, which had accrued prior to June 20, 1863, was paid subsequent to that date and received by the State of Virginia as follows:		
Cash Book No. 5 (not paged), Literary Fund, August 26, 1863, for interest due July 1, 1863, $12.00.		
This sum being proportioned to June 20, 1863, amounts to.....		$ 11 26
This bond was redeemed as set forth below:		
Cash Book No. 1, New Series, Literary Fund, Folio 240, Feb. 5, 1896—"Received on account of redemption of 6% Bond of Richmond Academy."	.....	400 00
		$411 26

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-17, D-13.

Page No. 33.

Class C. Hillman Exhibit 3 & 4.
Class D. Defendant Exhibit 3 & 4.
Asset D-13.
Asset C-17.
(Corresponds with Exhibit 3 & 4, Asset D. 13, C. 17, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

All figures in claim taken from file in vault of the Second Auditor's Office, containing the original settlement papers and confirmed by certified copy of record on file Treasury Department U. S., Washington.

Principal of loan by Virginia to U. S. Government July 1, 1814	$ 298,369 74
Interest on same to February 11, 1894	1,425,212 79
(Being 79 years 7 mos. 10 days @ 6%)	
	$1,723,582 53

Payment was effected in 1903 as of date of Feb. 11, 1894, as follows:

Virginia bonds owned by the U. S., returned—Principal	$ 581,800 00
Chesapeake & Ohio Guaranteed Bonds—Principal	13,000 00
Interest on $594,800 from Jan. 1, 1861, to Feb. 11, 1894	1,181,669 33
	$1,776,469 33
Less interest paid 1867-70, 4% on $581,800	69,816 00
	$1,706,653 33
Paid to the restored State of Virginia (no date)	16,923 70
	$1,723,577 03
Cash paid Virginia by the U. S., 1903, balance of settlement	5 50
	$1,723,582 53

Value of claim June 20, 1863—Principal	$ 298,369 74
Interest at 6% July 1, 1814, to June 20, 1863	872,260 07
Total	$1,170,629 81

Class C.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4. Asset C-18.
(Corresponds with Exhibit 3 & 4,
Asset C-18, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Claim vs. Selden, Withers and Company.

Collections made subsequent to June 20th, 1863.

Date.	Received from.	Reference.	Page.	Cash.
April 26, 1866	—James Neeson	Treas. Cash Book	126	$ 500 00
June 23, " — "	"	" " "	166	4,674 60
July 11, " — "	" Atty., &c.	" " "	182	1,189 48
Dec. 7, " — "	"	" " "	26	2,212 00
Nov. 5, 1868— "	"	" " "	14	5,522 00
July 17, 1869— "	"	" " "	125	5,150 00
April 27, 1871— "	"	" " "	195	5,000 00
June 3, "	—Sale Marietta & Cinn. R. R. Stock	B. P. W., Journal "N"	330	*8,036 49
July 6, "	—James Neeson	Treas. Cash Book	250	4,395 19
Sep. 13, "	—Sale Marietta & Cinn. R. R. Stock	B. P. W., Journal "N"	355	*11,871 30
Nov. 9, "	—a/c Sale Real Estate St. Louis	Snkg. Fd. Cash Book	2	5,089 29
Nov. 18, "	—Sale Marietta & Cinn. R. R. Stock	B. P. W., Journal "N"	262	*8,211 91
Dec. 23, "	—a/c Sale Real Estate St. Louis	Snkg. Fd. Cash Book	3	10,000 00
Mar. 6, 1872	—Sale Marietta & Cinn. R. R. Stock	" " " "	5	13,692 98
May 4, 1872	—James Neeson	" " " "	7	3,000 00
June 10, "	a/c Sale Real Estate St. Louis	" " " "	8	10,000 00

DEFENDANT'S EXHIBIT No. 3—1863—Asset C-18.

Page No. 34. (*Continued*)

Dec. 4, " —L. Turner	"	"	"	"	13	1,600 00	
Dec. 21, " —A. Wyle, Trustee for Withers	"	"	"	"	13	10,000 00	
June 23, 1873—James Neeson, Agent B. P. W.	"	"	"	"	17	9,500 00	
Sep. 24, " — " " " State of Va.	"	"	"	"	19	7,500 00	
Feb. 20, 1875— " " " " " "	"	"	"	"	31	1,600 00	
May 13, 1887—Cash	"	"	"	"	58	1,286 00	
Nov. 26, 1889—Board Pub. Wks.	"	"	"	"	60	2,504 00	
Aug. 20, 1891— " " "	"	"	"	"	61	307 50	
							$132,842 74

*Note:

Cash received			132,842 74
Less cash received from proceeds of sale of Marietta & Cincinnati R. R. Co. Stock, viz.:			
	$ 8,036 49		
	11,871 30		28,119 70
	8,211 91		
			$104,723 04
Add par value Virginia State Bonds purchased with proceeds from sale of Marietta & Cinn. R. R. Co. Stock..			47,300 00
Total as per Asset "C 18".....			$152,023 04

Same report, Doc. 6, page No. 8, states: "The stock of the Marietta & Cincinnati R. R. Co. was obtained by the State from Selden, Withers & Company."

DEFENDANT'S EXHIBIT No. 3—1863—Asset D-6, C-19.

Page No. 35.

Class C.
Class D.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Asset D-6.
Asset C-19.
(Corresponds with Exhibit 3 & 4, Asset D-6 & C-19, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Richmond, Fredericksburg & Potomac Railroad.

	Face Value.	Amount Due.
Dividend Certificates of Debt—		
Folio 280, Ledger "B," Internal Im'pt. Fund, shows that on June 20, 1863, the State of Virginia held a dividend certificate of debt of the Richmond, Fredericksburg & Potomac R. R. Company to the value of	$ 122,464 00	
This certificate was subsequently paid and the money received by the State of Virginia as follows:		
Cash Book, No. 5, Sinking Fund (not paged), July 1/63...		$ 122,464 00
Interest due July 1, 1863, on these bonds was paid as follows on June 30, 1863, as per folio 149, Journal "D," Internal Improvement Fund:		
3% on $ 83,936 00 —		$2,518 08
3½% on 28,896 00 —		1,011 36
3½% on 9,632 00 —		337 12
	$122,464 00	$3,866 56

DEFENDANT'S EXHIBIT No. 3—1863—Asset D-6, C-19.

Page No. 35. (*Continued*)

Which sum being proportioned to June 20, 1863, amounts to		3,631 69
		$ 126.095 69
On Dec. 30, 1872, as per Journal "N," Folio 416, Board of Public Works, the State of Virginia received on a judgment of the Circuit Court, for interest due on dividend bonds, in 1861 and 1862 the sum of	17,806 68	
Less attorney's fees	250 00	17,556 68
		$ 143,652 37

Note: The above named sum ($17,556.68) was received by the Treasurer of the State of Virginia and turned over to the Sinking Fund, as shown by page 12, Treasurer's Report of Sinking Fund Cash, Sept. 30, 1873, in Annual Report of 1873.

DEFENDANT'S EXHIBIT No. 4—1863.

Hillman Exhibit 4-B.

Class D.

Corresponds with Exhibit 4-B, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Recapitulation of Schedule "D" Assets.

Results of Revision of Schedule "D" Assets by Hillman.

	Schedule D. Details.	Totals.
1. Orange & Alexandria R. R. Co. Stock	$ 31,604 09	
Overpaid	1 02	$ 31,605 11
2. Richmond & Danville R. R. Co. Stock	00	
Loan	00	00
3. Richmond & Petersburg R. R. Co. Stock	21,857 80	21,857 80
4. Virginia Central R. R. Co. Stock	00	
Loan	6,903 33	
Dividend Bond	2,390 99	9,294 32
5. Winchester & Potomac R. R. Co	00	00
6. Richmond, Fredericksburg & Potomac R. R. Co. Dividend Certificate	3,631 69	
Decree of Court, Dividend Bonds	17,556 68	21,188 37
7. Virginia & Tennessee R. R. Co. Loan	15,469 61	15,469 61
8. South Side R. R. Co. Loan	208,375 69	208,375 69
9. Norfolk & Petersburg R. R. Co. Stock	2,324 52	
Loan	93,866 57	96,191 09
10. James River & Kanawha Co.	00	00

Page No. 36. (*Continued*)

11. Loan to Washington College	56 35	56 35
12. Richmond Academy Bonds	11 26	11 26
13. Claim against U. S. Government	872,260 07	872,260 07
14. The Farmers' Bank of Virginia	4,762 16	4,762 16
15. Bank of Virginia	37,974 88	37,974 88
16. Bank of the Valley	24,199 00	24,195 00
17. Exchange Bank	8,385 14	8,385 14
18. Northwestern Bank	00	00
19. Fairmount Bank	00	00
20. Blue Ridge R. R. Tolls for use of	5,853 81	5,853 81
		$1,357,480 66

Class D.

Hillman Exhibit 3 & 4.
Defendant Exhibit 3 & 4.
Assets D-14 to 19.
(Corresponds with Exhibit 3 & 4,
Asset D-14-19, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Bank dividends due June 20, 1863, on Stock owned by the Commonwealth of Virginia and received subsequent to that date.

	Total Paid.	Proportion to June 20, 1863.
1863.		
Aug. 1—Dividend due June 1, 1863, Folio 129, Journal M. M., Treasurer, Office, Bank of the Valley..	$18,500 00	$18,500 00
Dec. 19—Dividend due Dec. 1, 1863, Folio 174, Journal M. M., Treasr's. Office, Farmers Bank of Va.	37,875 00	3,932 43
1864.		
Jan. 13—Dividend due Dec. 1, 1863, Folio 188, Journal M. M., Treasr's. Office, Exchange Bank of Va.	67,904 00	7,050 14
1863.		
July 25—Dividend due June 1, 1863, Folio 148, Journal D, Internal Imp. Fund., Bank of Va.....	29,382 50	29,382 50
July 10—Dividend due June 1, 1863, Folio 148, Journal D, Internal Imp. Fund, Ex. Bank of Va....	1,335 00	1,335 00
Aug. 1—Dividend due June 1, 1863, Folio 148, Journal D, Internal Imp. Fund., Bank of the Valley	5,235 00	5,235 00
June 25—Dividend due June 1, 1863 (not paged), Cash Book No. 5, Literary Fund, Bank of Va...	7,423 50	7,423 50
Aug. 1—Dividend due June 1, 1863 (not paged), Cash Book No. 5, Lit. Fund, Bank of the Valley	460 00	460 00
Dec. 19—Dividend due Dec. 1, 1863 (not paged), Cash Book No. 5, Lit. Fund, Farmers Bank of Va.	7,905 00	829 73
Dec. 29—Dividend due Dec. 1, 1863 (not paged), Cash Book No. 5, Literary Fund, Bank of Va..	11,135 25	1,168 88
		$75,317 18

Hillman Exhibit No. 5—1.
Defendant Exhibit No. 5—1.
(Corresponds with Exhibit No. 5—1, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing ownership of stocks in various banks by the Commonwealth of Virginia, June 20, 1863, and the value of the same as shown by Banks' Statements as of Jan. 1, 1861.

	Par.	Value Per Share Jan. 1, 1861.	Less Div. Declared Jan. 1, 1861, Per Share.	Net Value Per Share.
FARMERS' BANK OF VA.—Par $100 per share:				
Literary Fund—1,054 shares	$105,400 00			
(Page 13, Lit. Fund Ledger)		@		
Board Public Works—3,522 shares	352,200 00	115.07%	3½%	111.57%
(Page 282, Ledger "B," 2d Audr's. Of.)				
Commonwealth Fund—5,050 shares	505,000 00			
(Page 50, Ledger 1861-4, Audr's. Of.)				
Total—9,626 shares @ $100	$962,600 00	$1,107,663 82	$ 33,691 00	$1,073,972 82

Statement of Farmers Bank of Virginia, January 1, 1861. Taken from printed report of officers (under oath) to State. Document 14, Annual report of Auditor for 1861, pages 14-15 2d Auditor.

Assets.		Liabilities.	
Debt Outstanding	$5,764,680 74	Capital Stock	$3,150,900 00
Sterling Bills	5,375 84	Notes in Circulation	1,532,578 00
Stocks	41,728 51	Deposits	1,931,138 51
Specie	416,120 40	Due other Banks	240,885 56
Notes other Virginia Banks	583,276 20		
Notes outside Virginia Banks	9,987 00		
Dde from other Banks	308,730 62		

Real Estate	193,696 46	Profit and Loss	337,067 05
In transitu	7,074 53	Profits of the Institution	138,101 18
	$7,330,670 30		$7,330,670 30

Profits, $475,168.23, show Book Value of 115.07 Jan. 1, 1861.

Dividends declared—	1856	per share	(par)	8	%
" "	1857	"	"	8	%
" "	1858	"	"	7½	%
" "	1859	"	"	7½	%
" "	1860	"	"	7¼	%
" "	1861	"	"	7¼	%
" "	1862	"	"	7	%
" "	1863	"	"	7½	%

Diligent search was made for statements of this bank covering the years 1862 and 1863 in the War Department and Congressional Library in Washington, D. C., and in the records of the State of Virginia without result. The fact that this bank declared dividends in 1863 even greater than in 1861 would tend to indicate that this bank stock was at least of equal value in 1863 as in 1861.

Hillman Exhibit No. 5-2.
Defendant Exhibit No. 5-2.
(Corresponds with Hillman Exhibit No. 5-2, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

BANK OF VIRGINIA—Par $70 per share.	Par.	Value Per Share Jan. 1, 1861. (Dec. 31, 1860)	Less Div. Declared Jan. 1, 1861, Per Share	Net Value. Per Share.
Literary Fund, 2,121 shares ..... (Page 13, Lit. Fund Ledger)	$148,470 00	$78 75	$2 45	$76 30
Board Public Works, 8,395 shares..... (Page 282, Ledger "B," Int. Imp. Fund)	587,650 00			
Commonwealth Fund, 3,250 shares.....	227,500 00			
(Page 57, Journal kk., Treasr., shows payment of dividends 3½ declared Jan. 1, 1861, on $227,500. The amount on Ledger covering this date has been erased, but it shows in both prior and subsequent Ledgers.)				
Total—13,766 shares @ $70.....	$963,620 00	$1,084,072 50	$ 33,726 70	$1,050,345 80

Statement of Bank of Virginia, Jan. 1, 1861. *Taken from printed report of officers (under oath). Page* 6, *Document* 14, *Annual Report of Auditors of State of Virginia for* 1861. *On file Second Auditor's office, Vol.* 2.

Assets.		Liabilities.	
Debt Outstanding	$4,513,439 93	Capital Stock	$2,651,259 00
Stocks	64,721 30	Notes in Circulation	1,058,228 83
Real Estate	178,555 33	Deposits	1,545,968 64
Specie	376,355 54	Due other Banks	188,296 51
Notes other Virginia Banks	365,574 05		
Notes outside Virginia Banks	9,217 00		
Due from other Banks	235,562 53		

Unredeemable—Stolen Notes	18,900 00	Profit and Loss	322,549 39
In transitu	13,653 62	Profits since Dec. 1st	9,685 93
	$5,775,979 30		$5,775,979 30

Profit, $332,235.32, shows Book Value of stock $1.125 on the dollar, $78.75 per share.

Dividends declared—	1856,	on par	8 %	per	share	$5.60
"	1857,	"	7½ %	"	"	5.25
"	1858,	"	7¼ %	"	"	5.075
"	1859,	"	7¼ %	"	"	5.075
"	1860,	"	7¼ %	"	"	5.075
"	1861,	"	7 %	"	"	4.90
"	1862,	"	7 %	"	"	4.90
"	1863,	"	5½ %	"	"	3.675

Diligent search was made for statements of this bank covering the years 1862 and 1863 in the War Department and in the Congressional Library in Washington, D. C., and in the records of the State of Virginia without results. This bank declared a dividend of 7% in 1862 and 5½% in 1863, which would indicate that the bank was still solvent and the stocks were of value in 1863 in proportion to the amount of dividend declared.

DEFENDANT'S EXHIBIT No. 5—1863.

Class E.

Page No. 40.

Hillman Exhibit No. 5—3.
Defendant Exhibit No. 5—3.
(Corresponds with Exhibit No. 5—3, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

	Par.	Value. Jan. 1, 1861.	Less Div. Declared Jan. 1, 1861.	Net Value.
BANK OF THE VALLEY—Par $100 per share:				
Literary Fund—92 shares ..... (Page 14, Lit. Fund Ledger) The State of Va. paid for these 92 shares $10,134.00.	$ 9,200 00			
Board of Public Works—1,047 shares..... (Page 282, Ledger "B," Inter. Imp. Fund)	104,700 00	@ 114.7%	3½%	111.2%
Commonwealth Fund—3,700 shares..... (Page 50, Ledger 1861-4, Audr's. Of.)	370,000 00			
Total—4,839 shares @ $100.....	$483,900 00	$555,033 30	$ 16,936 50	$538,096 80

Statement of Bank of the Valley, Jan. 1, 1861. *Taken from printed report of officers (under oath) to State of Virginia. Document* 14, *pages* 34-35 *Annual Report of Auditor,* 1861-2.

Assets.		Liabilities.	
Specie	$ 313,180 63	Capital Stock	$1,215,000 00
Notes—State Banks	33,161 92	Notes in Circulation	1,176,990 50
Notes Outside Banks	41,461 39	Due Other Banks	120,409 81
Due from other Banks	296,000 71	Discount	7,298 33
Notes Discounted	1,692,805 66	Deposits	210,988 13
Inland Bills Discounted	408,124 81		
Va. Treasury Notes	5,400 00		
Bond Account	29,212 06		
Real Estate	76,337 57		
Claim vs. Deceased Teller	13,522 12	Profit and Surplus	178,520 10
	$2,909,206 87		$2,909,206 87

Profits and Surplus, $178,520.10, show Book Value of 114.7 Jan. 1, 1861.

Dividends declared—1856, 10 %
" " 1857, 9 %
" " 1858, 8 %
" " 1859, 8 %
" " 1860, 7½ %
" " 1861, 6¾ %
" " 1862, 4 %
" " 1863, 4 %

Diligent search was made for statements of this bank covering the years 1862 and 1863 in the War Department and Congressional Library in Washington, D. C., and in the records of the State of Virginia without result. This bank declared a dividend of 4% both in 1862 and in 1863, which would indicate that the bank was still solvent and that the stocks were of value in 1863 in proportion to the amount of dividend declared.

Class E.

Hillman Exhibit No. 5—4.
Defendant Exhibit No. 5—4.
(Corresponds with Exhibit No. 5—4., Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

EXCHANGE BANK—Par $100 per share:	Par.	Value. Jan. 1, 1861.	Less Div. Declared Jan. 1, 1861.	Net Value.
Board of Public Works—267 shares..... (Page 282, Internal Improvement Fund, Second Auditor's Office)	$ 26,700 00	@ 110.9%	3.5%	107.4%
Commonwealth Fund—8,488 shares ..... (Page 50, Ledger 1861-4, Audr's. Of.)	848,800 00			
Total—8,755 shares @ $100.....	$875,500 00	$979,929 50	$ 30,642 50	$940,287 00

Statement of Exchange Bank, Dec. 31, 1860. *Taken from printed report of officers (under oath) to State of Virginia. Document* 14, *page* 22, *Annual Report of Auditor,* 1861-2.

Assets.		Liabilities.	
Loans	$5,257,662 94	Capital Stock	$3,137,100 00
Virginia and other State Sec.	90,936 56	Circulation	1,235,633 50
Foreign Bills of Exchange	21,999 08	Due Other Banks	122,638 38
Due from Virginia Banks	431,758 89	Deposits	1,689,635 46
Due from Outside Banks	13,402 21	In transitu	9,137 36
Notes of Other Banks	168,662 23		
Real Estate	179,381 12	Contingent Fund	191,584 24
Specie	376,511 96	Profits	150,586 05
	$6,536,314 99		$6,536,314 99

Contingent Fund (Reserve) and Profits, $342,170.29, show Book Value of 110.9 Jan. 1, 1861 (close of business Dec. 31, 1860).

Dividends declared—1856, 9 %
" " 1857, 10 %
" " 1858, 8 %
" " 1859, 9 %
" " 1860, 7½ %
" " 1861, 7¼ %
" " 1862, 7 %
" " 1863, 8 %

Diligent search was made for statements of this bank covering the years 1862 and 1863 in the War Department and Congressional Library in Washington, D. C., and in the records of the State of Virginia without result. The fact that this bank declared dividends in 1863 even greater than in 1861 would tend to indicate that this bank stock was at least of equal value in 1863 as in 1861.

DEFENDANT'S EXHIBIT No. 5—1863.

Class E.

Hillman Exhibit No. 5—5.
Defendant Exhibit No. 5—5.
(Corresponds with Exhibit No. 5—5, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

	Par.	Value. Jan. 1, 1861.	Less Div. Declared Jan. 1, 1861,	Net Value.
NORTHWESTERN BANK—Par $100 per share.				
Literary Fund—500 shares ..... (Page 14, Lit. Fd. Ledger)	$ 50,000 00	111.9%	3½%	108.4%
Board Public Works—326 shares..... (Page 282, Ledger "B," Internal Improvement Fund)	32,600 00			
Commonwealth Fund—2,918 shares ..... (Page 46, Ledger, First Auditor's, 1856-61, shows $400,000. No subsequent entries, item being left blank on next trial balance. Sinking Fund Journal, Feb. 27/57 shows sale of 1,082 shares and subsequent payment of dividends confirms.)	291,800 00			
Total—3,744 shares @ $100.....	$374,400 00	$418,953 60	$ 13,104 00	$405,849 60

Page No. 42. (*Continued*)

Statement of Northwestern Bank, Jan. 1, 1861. *Taken from printed report of officers (under oath) to State of Virginia. Document* 14, *page* 40, *Second Auditor's Report,* 1861-2. (*Copy of book on file Second Auditor's Office.*)

Assets.		Liabilities.	
Domestic Debt	$ 823,130 86	Capital Stock	$ 868,100 00
Bills of Exchange	728,243 37	Circulation	834,973 00
Stock of this Bank	29,000 00	Deposits	228,023 46
Other Stocks	27,012 53	Due other Banks	54,513 12
Banking House and Other Real Estate	145,869 92	In transitu	20,784 46
Due from other Banks and Branches	102,321 21		
Notes of Virginia Banks	60,510 00		
Notes of other Banks, Checks and Ctfs.	31,939 43	Contingent Fund	63,732 96
Coin	162,216 05	Profits	40,116 41
	$2,110,243 41		$2,110,243 41

Contingent Fund (Reserve) and Profits, $103,849.37, show Book Value of 111.9% Jan. 1, 1861.

Dividends declared—1856, 10 %
" " 1857, 5 %
" " 1858, 7½ %
" " 1859, 8 %
" " 1860, 7½ %
" " 1861,
" " 1862,
" " 1863,

Diligent search was made for statements of this bank covering the years 1862 and 1863 in the War Department and Congressional Library in Washington, D. C., and in the records of the State of Virginia without result. No dividends were received by the State of Virginia from this bank in 1862 or 1863. Stock of this bank, par value, $374,400, was still held by the State of Virginia June 20, 1863.

DEFENDANT'S EXHIBIT No. 5—1863.

Hillman Exhibit No. 5—6.
Defendant Exhibit No. 5—6.
(Corresponds with Exhibit No. 5—6, Jan. 1, 1861.)

Class E.

STATE OF WEST VIRGINIA.

	Par.	Value. Jan. 1, 1861.	Less Div. Declared Jan. 1, 1861,	Net Value.
FAIRMOUNT BANK—Par $100 per share:		@ 106.87%	3%	103.87%
Literary Fund—500 shares	$ 50,000 00	$ 53,435 00	$ 1,500 00	$ 51,935 00

Statement of Fairmount Bank, Jan. 1, 1861. *Taken from printed report of officers (under oath) to State of Virginia. Document* 14, *page* 156, *Auditor's Report,* 1860-1. (*Copy of book on file Second Auditor's Office.*)

Assets.		Liabilities.	
Stocks	$ 61,750 00	Capital Stock	$107,950 00
Real Estate	4,027 84	Circulation	123,350 00
Notes and Bills Discounted	153,327 02	Unclaimed Dividends	706 00
Due from Banks	977 79	Due to Banks	5,960 81
Specie	27,491 38	Due to Depositors	7,198 76
Notes of Virginia Banks	3,490 00		
Notes and Checks, Outside Banks	1,520 00	Surplus Fund	7,418 46
	$252,584 03		$252,584 03

Profits, $7,418.46, show Book Value of 106.87 Jan. 1, 1861.
Dividends declared—1860, 4½%

Diligent search was made for statements of this bank covering the years 1862 and 1863 in the War Department and Congressional Library in Washington, D. C., and in the records of the State of Virginia without result. This bank did not declare any dividends in 1861, 1862 or 1863. The State of Virginia held stock in this bank on June 20, 1863, to the par value of $50,000.

DEFENDANT'S EXHIBIT No. 6—1863.

Page No. 44.

Class F.

Hillman Exhibit 6
Defendant Exhibit 6.
(Corresponds with Exhibit 6, January 1, 1861)

STATE OF WEST VIRGINIA.

Sale of Various Stocks & Loans to the Atlantic, Mississippi & Ohio R. R.

Pages 178-179, Journal "D," Internal Im'pt. Fund, shows this sale in the following detail of the stocks and loans transferred to this road for the $4,000,000 Second Mortgage on the A. M. & O. R. R.:

	STOCKS—	
I.	8,175 shares Norfolk & Petersburg R. R. Stock	$ 817,500 00
II.	825 shares Norfolk & Petersburg Gt'd. Stock	82,500 00
III.	3,000 shares Norfolk & Petersburg Pf'd. Stock	300,000 00
IV.	8,035 shares South Side R. R. Stock	803,500 00
V.	17,168 shares Virginia & Tennessee R. R. Stock	1,716,800 00
VI.	832 shares Virginia & Tennessee Gt'd Stock	83,200 00
VII.	5,000 shares Virginia & Tennessee Pf'd Stock	500,000 00
VIII.	1,034 shares Virginia & Kentucky R. R. Stock	103,400 00
	Bonds and Notes as follows:	
II.	Note of the Norfolk & Petersburg R. R. for interest due and unpaid on loan of $300,000	13,271 41
I	Note of the N. & P. R. R. for interest accrued and unpaid on July 1, 1870, on 825 shares guaranteed stock	27,225 00
III.	Unpaid balance of principal of the $300,000 loan	163,000 00
IV.	All claim the State may have vs. the South Side R. R. on acct. of the principal and interest due upon the loan of $800,000	
V.	Registered Certificate of the Va. & Tenn. R. R. Company being for interest unpaid on 832 shares of Va. & Tenn. Gt'd. Stock up to July 1, 1870	79,040 00
VI.	All claims, rights and privileges which belong to the State of Virginia on acct. of loan of $1,000,000.	
	For all of the above is charged against the Atlantic, Mississippi & Ohio R. R.	$4,000,000

That the above was a second mortgage for this amount and not a charge against the road is evidenced by the above pages in the preamble to entry and by the first general balance sheet of the A. M. & O. R. R. Company, Sept. 30, 1871, on file in comptroller's office of the Norfolk & Western R. R. Company at Roanoke, Va., and examined by Mr. Parsons of Mr. Hillman's force, wherein the item "Second Mortgage to the State of Virginia," $4,000,000.00, is shown in liabilities.

SUPPLEMENT TO DEFENDANT'S EXHIBIT No. 6, 1863.

Acts of General Assembly of Virginia, 1881-82.

On pages 76-78 will be found the following Act approved February 9, 1882, pertaining to the State's interest in the Atlantic, Mississippi and Ohio Railroad, to-wit:

Chap. 77—An Act ratifying the sale by the Board of Public Works of the claim of the State against the Atlantic, Mississippi and Ohio Railroad.

Approved February 9, 1882.

Whereas the Board of Public Works of the State of Virginia, acting for said State, did, by agreement dated tenth February, anno domini eighteen hundred and eighty-one, grant, bargain, sell and assign to U. L. Boyce and F. J. Kimball, acting for themselves and their associates, in consideration of the sum of five hundred thousand dollars, to be paid as therein provided, all the right, title and interest of the State of Virginia in, or to, or against, the Atlantic, Mississippi and Ohio Railroad Company by virtue of the covenant or mortgage dated twenty-second December, eighteen hundred and seventy, made and executed by said company in accordance with the terms of the tenth section of an act of the general assembly of the State of Virginia, approved June seventeenth, anno domini, eighteen hundred and seventy, authorizing the formation of the Atlantic, Mississippi and Ohio Railroad Company; and whereas the said sale was by said agreement made subject to the condition that the said Boyce and Kimball, and their associates, should become the purchasers of the said railroad under the decree of sale entered by the Circuit Court for the Fourth Judicial Circuit and Eastern District of Virginia in the cause therein pending of William Butler Duncan and Samuel L. M. Barlow, surviving trustees, plaintiffs, against the said Atlantic, Mississippi and Ohio Railroad Company and other defendants, and upon the terms agreed upon between themselves and the president and board of directors of said company, and with the proviso that unless the said Boyce and Kimball and their associates should within ninety days from the date of said agreement, or as soon thereafter as said Circuit Court of the United States should confirm this purchase of said railroad, deposit with the Board of Public Works the sum of one hundred thousand dollars, in money or in public securities, satisfactory to said board, of the market value of one hundred thousand dollars, and should, on the ratification of said sale by the General Assembly of Virginia, pay over to said board, in cash, the further sum of four hundred thousand dollars, the balance of said purchase money, then the said

agreement should be void, else to remain in full force and virtue; and whereas the said Boyce and Kimball and their associates, did become the purchasers of said Atlantic, Mississippi and Ohio Railroad and of the franchises and property of said railroad company at the foreclosure sale hereinbefore referred to, and have complied with the terms agreed upon between them and the president and board of directors of the Atlantic, Mississippi and Ohio Railroad Company, as by said contract with the Board of Public Works it was stipulated they should do in the event of their becoming such purchasers, which sale was ratified and confirmed by said United States Circuit Court, by virtue of which sale, and of the conveyance made pursuant thereto, the said Boyce and Kimball and their associates (of whom Clarence H. Clark was the one in whose name the purchase of said railroad was made), and become and are a corporation, by the name of The Norfolk and Western Railroad Company, which corporation has thus become entitled to the benefit of, and is bound by the agreement made as aforesaid with the Board of Public Works; and whereas the said sale of all the right, title and interest of the State of Virginia in or to, or against the Atlantic, Mississippi and Ohio Railroad Company, made by the said Board of Public Works, to the said Boyce and Kimball and their associates, as hereinbefore recited, was made subject to the ratification of the General Assembly of Virginia, with a proviso that if the General Assembly of Virginia should fail to ratify and confirm the same at its then next session, the Board of Public Works should redeliver to the said Boyce and Kimball and their associates all the securities or money which should have been delivered or paid to said Board of Public Works by the said Boyce and Kimball and their associates under the terms of said agreement, together with the accrued interest thereon; and whereas the said Boyce and Kimball and their associates, by their corporate name and style of the Norfolk and Western Railroad Company, have fully complied with all the terms and conditions of said agreement, and did, on the tenth day of May, anno domini, eighteen hundred and eighty-one, in conformity therewith, deposit with the Board of Public Works of the State of Virginia, the sum of one hundred thousand dollars in lawful money of the United States, and are now ready and willing to pay the further sum of four hundred thousand dollars to the Board of Public Works, upon the ratification and confirmation by this General Assembly of said sale, made to them by the Board of Public Works, as hereinbefore recited and set forth; therefore,

1. Be it enacted by the General Assembly of Virginia, That the action of the Board of Public Works in making and executing on behalf of the State of Virginia the said agreement of February tenth, anno domini eighteen hundred and eighty-one, with the said U. L. Boyce and F. J. Kimball, acting for themselves and their associates, and the sale and transfer thereby to the said Boyce and Kimball and their associates, of all the claim and demand, right and title, and interest of the State of Virginia in or to or against the Atlantic, Mississippi and Ohio Railroad Company, under or by virtue of the covenant or mortgage executed by said company,

and in said agreement referred to, be, and the same is hereby fully approved, ratified and confirmed.

2. And be it further enacted, That upon the payment by the said Norfolk and Western Railroad Company to the Board of Public Works of the State of Virginia, of the balance of the said five hundred thousand dollars purchase money, after crediting said purchase with the one hundred thousand dollars deposited with the Board of Public Works, and with whatever interest shall have accrued upon said one hundred thousand dollars up to the date of the approval of this act, the said Norfolk and Western Railroad Company shall become and be the full and absolute owner of all rights, title and interest of the State of Virginia in or to, or against the Atlantic, Mississippi and Ohio Railroad Company, under or by virtue of the covenant or mortgage dated the twenty-second day of December, anno domini, eighteen hundred and seventy, and executed by and between said company and the Board of Public Works, in accordance with the terms of the tenth section of the act approved June seventeenth, anno domini, eighteen hundred and seventy, authorizing the formation of the Atlantic, Mississippi and Ohio Railroad Company, and of all the rights, title and interest of the State of Virginia, under and by virtue of the proceedings and decrees of the Circuit Court of the United States for the Fourth Judicial Circuit and Eastern District of Virginia, in the equity suit in the names of Duncan and Barlow, surviving trustees, and so forth, plaintiffs, against the Atlantic, Mississippi and Ohio Railroad Company and others, pending in said court, and also in the Supreme Court of the United States, and the Board of Public Works is directed to cause the appeal which has been taken on behalf of the State of Virginia to the Supreme Court of the United States from a decree rendered in said cause by said United States Circuit Court to be dismissed, or it shall, otherwise dispose of the same as the said Norfolk and Western Railroad Company may desire and request; and shall execute all such transfers, assignments and releases as may be necessary or proper to vest in and confirm to the said Norfolk and Western Railroad Company, all the rights and interests which it is the purpose of this act to assure to it; provided that the payment of the said balance of the five hundred thousand dollars shall be made on or before the first day of March, anno domini, eighteen hundred and eighty-two.

3. This act shall be in force from its passage.

DEFENDANT'S EXHIBIT No. 6-A.—1863.

Defendant Exhibit 6-A.
(Corresponds with Exhibit 6-A., Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing the book value of securities listed under Class "F" at nearest accurately determinable date to June 20, 1863.

		Par.	Profits.	Book Value.	Date.
Virginia & Tennessee R. R. Co.	Stock	$3,452,813 32			
	Profits		x$ 3,285 30	$ 99 90	Jan. 30, 1860
Southside R. R. Co.	Stock	1,362,900 00			
	Profits		81,471 88	105 98	Sept. 30, 1861
Virginia & Kentucky R. R.	Stock	82,000 61		Par 100 00	
Norfolk & Petersburg R. R. Co.	Stock	1,810,800 00			
	Profits		x 139,242 12	89 52	March 31, 1861

*Loss

		Par of State of Va. Holdings June 20, 1863.	as of 1861. Book Value	June 20, 1863. Value
Virginia & Tennessee R. R. Co.	Stock	$2,270,525 00	$ 99 90	$2,268,254 48
Southside R. R. Co.	Stock	803,500 00	105 98	851,549 30
Southside R. R. Co.	Loan	800,000 00		
Virginia & Kentucky R. R. Co.	Stock	103,438 69	100 00	103,438 69
Norfolk & Petersburg R. R. Co.	Stock	1,499,970 00	89 52	1,342,773 14
Norfolk & Petersburg R. R. Co.	Loan	300,000 00		
				$4,566,015 61

DEFENDANT'S EXHIBIT No. 6-A—1863.

Page No. 45. (*Continued*)

Reliable date could not be obtained to work up the book value of the stocks of these railroads as of 1862 and 1863, and it became necessary to quote the book value as of 1861.

It will be observed that the State of Virginia increased its holdings in the Virginia & Kentucky Railroad from Jan. 1, 1861 to June 20, 1863 to the extent of $21,438.08 and in the Norfolk & Petersburg R. R. $60,000. (Error in schedule 6 A for Jan. 1, 1861, should read par value of Norfolk & Petersburg R. R. Co. Stock, held by the State of Virginia $1,439,970.00, instead of $1,200,000.00.)

All of these roads and the loans made by the State of Virginia to them, were eventually turned over to the Atlantic, Mississippi & Ohio R. R. Co. in consideration of the purchase price $4,000,000.00, secured by a second mortgage.

This statement is therefore designed to show the value of the State of Virginia's holdings previous to the disposal of same.

CLASS F—1863.

DEFENDANT'S EXHIBIT No. 6—1863—B.

Journal "D" Page (176) Internal Improvement Fund:

241 Loan to Norfolk & Petersburg Railroad.
182 To Norfolk & Petersburg Railroad Company Stock.

For this amount improperly charged to latter $300,000

DEFENDANT'S EXHIBIT No. 6—1863—C.

Journal "D," page 178, Internal Improvement Fund:

December 22, 1870.

284 Atlantic, Mississippi & Ohio Railroad Co.:
175 To Stocks & Loans & made to Int. Imp. Co. (that have been sold, &c.).

(Whereas, by the terms of an act June 17, 1870, entitled 'An Act to authorize the formation of the Atlantic, Mississippi and Ohio Railroad Company, the B. P. W. is empowered and directed to sell and transfer to the A. M. & O. R. R. Co. all of the stock held by the State in the Norfolk and Petersburg, in the South Side, in the Virginia and Tennessee, and in the Virginia and Kentucky Railroad Companies, for and in consideration that the Commonwealth of Virginia is absolved from all and whatever liability by reason of her unsatisfied subscription to the Va. & Ky. R. R. Co. It is expressly by the terms of said Act that the payment of $4,000,000 shall be secured by a second mortgage upon the property of the said Atlantic, Mississippi and Ohio Railroad Co. In accordance therewith the Board of Public Works have this day sold and delivered over to the said A. M. & O. R. R. the following property:

I.	Stock certificate No. 39, Norfolk & Petersburg Railroad Company, for 8,175 shares of ordinary stock.....$	817,500	
II.	Stock Certif. No. 40 of same, for 825 shares of stock guaranteed to pay 6 per cent. annually.....	82,500	
III.	Stock Certif. No. 41, of ditto, for 3,000 shares of stock preferred to pay (7 per cent.) annually	300,000	1,200,000
IV.	Stock Certif. No. 881, of the South Side Railroad Co. for 8,035 shares of ordinary stock		803,500
V.	Stock Certif. No. 1770 of Va. & Tenn. R. R. Co. for 17,168 shares of ordinary stock	1,716,800	
VI.	Stock Certif. No. 1771 of the Va. & Tenn. R. R. Co. for 832 shares of guaranteed stock	83,200	
VII.	Stock Certif. No. 1772 of same for 5,000 shares of preferred stock	500,000	2,300,000
VIII.	Stock Certif. No. 1, Va. & Ky. R. R. Co. for 1,034 shares		103,400
	Also the following claims against the aforesaid companies:		
II.	The note of the Norfolk and Petersburg Railroad Co., the same being for interest due and remaining unpaid as of the first July, 1870, upon the loan of 300,000 dollars		13,271 41
I.	The note of the same, being for interest accrued and remaining unpaid as of first of July, 1870, on the 825 shares of guaranteed stock		27,225

III. The amount remaining to be due of the $300,000 loan to Norfolk & Petersburg Railroad and unredeemed		163,000 00
IV. All the claim which the State may have against the South Side Railroad Co. on account of principal and interest due upon the loan of $800,000 made in 1853 to said company		
V. Registered certificate of the Virginia and Tennessee Railroad Co., the same being for interest accrued upon the 832 shares of guaranteed stock as of July 1, 1870, held by the State in said company	79,040	
VI. All claims, rights and privileges which belong to the State of Virginia on account of the loan of 1,000,000 dollars made to said company under an Act February 9, 1853, &c.		
For the above consideration the former account is chargeable to the latter account		$4,000,000

See Proceedings, B. P. Works, Journal M, Dec. 22, 1870.

DEFENDANT'S EXHIBIT No. 7—1863—Sheet 1.

Page No. 46.

Class G.
Sheet 1.

Hillman Exhibit 7.
Defendant Exhibit 7.
(Corresponds with Exhibit 7, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

James River & Kanawha Canal Co.

Statement of value of this property as it was absorbed and capitalized by the Richmond & Alleghany Railroad Co., 1881.

CLASS G—1863.

1. First general balance sheet of the Richmond & Alleghany R. R., on file in the office of the Vice President of the Chesapeake & Ohio R. R. in the city of Richmond, shows on Page 11 amongst the assets of the Company the following entries, which for convenience in this sheet have been numbered—

1. James River & Kanawha Co. and Buchanan & Clifton Forge R. R. Co. Liens with Trustee 1st Mortgage	$1,393,637 66	
2. Franchises and right of way	5,588,609 76	
3. Richmond Docks	1,000,000 00	
TOTAL	$7,982,247 42	

Notes:

1. The lien on the James River & Kanawha assumed by the Richmond & Alleghany amount to $1,394,026.00, as shown on detail of deed by which the property is transferred to the Richmond & Alleghany. It is therefore probable that that amount was all on account of the James River & Kanawha. $1,393,637 66
2. Franchises and Right of Way—The distance from Richmond to Clifton Forge was 230.5 miles. I am informed at the Chesapeake & Ohio Office that the distance has not been appreciably changed since that date, also that the distance from Buchanan to Clifton Forge is about 33 miles. Allowing that the Richmond dock

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DEFENDANT'S EXHIBIT No. 7—1863—Sheet 1.

Page 46. (*Continued*)

CLASS C—1863.

property cut off the distance, say 5 miles we would have on a mileage basis approximately 85%. The report above referred to says, on page 5, "Acquired the property of the James River & Kanawha and the Buchanan and Clifton Forge R. R. at a cost in stock and bonds of $6,389,511.93. Thus securing legal right of way for its railway lines, basin and docks in Richmond, and other property including liens of $1,537,381.42." The Company same page same report, says it also expended $199,097.83 for "further right of way," making total right of way $6,588,609.76. $1,000,000 of which has been arbitrarily assigned to Richmond Docks and Basin leaving the charge to Right of Way $5,588,609.76, as above." We proportion on the 85% the $5,389,511.93, giving us as the James River & Kanawha Canal proportion — 4,581,085 14

3. Richmond Docks and Basin must be acquired in entirety from the James River & Kanawha — 1,000,000 00

$6,974,722 80

Deducting Liabilities assumed on account of liens — 1,537,381 42

$5,437,341 38

This report on page 11, says "From Buchanan to Williamson Road was built on the unfinished work of the Buchanan & Clifton Forge R. R" and "Experience with the Maintenance of Track on the towpath has fully sustained the expectations of those who asserted its advantages as a road bed."

DEFENDANT'S EXHIBIT No. 7—1863—Sheet 2.

Class G.
Sheet 2.

Page No. 47.
Hillman Exhibit 7.
Defendant Exhibit 7.
(Corresponds with Exhibit 7, Jan. 1, 1861.)

CLASS G—1863.

STATE OF WEST VIRGINIA.

James River & Kanawha Canal Co.

11. Second annual balance sheet of the Richmond & Alleghany R. R.—1882 shows September 30th that the "Right of Way," etc., was	$5,446,662 00	
If from this we deduct the amount expended as above	199,097 83	
	$5,247,564 17	
We have left for the James River & Kanawha Property 85% of which is		$4,410,429 54
Add the Richmond Docks		1,000,000 00
And we have a value of the James River & Kanawha property on the Richmond & Alleghany 2d Annual Report of		$5,410,429 54

The Richmond & Alleghany has in this balance sheet set up the "Manchester Water Power" for $197,277.00, which possibly may account for the smaller amount assigned directly to the Right of Way as above.

CLASS G.

DEFENDANT'S EXHIBIT No. 7, 1863—A.

Acts of General Assembly 1861. Pages 70 to 82.

Chap. 56.—An Act to incorporate the Virginia Canal Company, and to transfer the Rights and Franchises of the James River and Kanawha Company thereto.

Passed March 29, 1861.

1.—Of the Incorporation of the Company.

Whereas the James River and Kanawha Company, at their called meeting in the month of August, eighteen hundred and sixty, authorized an agreement to be entered into, and which was executed by the president of said company in pursuance of such authority, between himself and Ernest de Bellot des Minieres, and his associates, under the firm and style of Bellot des Minieres, Brothers & Co. of France, and to which the Board of Public Works of this State gave its assent, as evidenced by the signature of its president thereto; which agreement is in the following words:

"An Executory Agreement, entered into this first day of September, in the year eighteen hundred and sixty, between Ernest de Bellow des Minieres, for himself and his associates, under the firm and style of Bellot des Minieres, Brothers and Company, of France, of the one part, and Thomas H. Ellis, president of the James River and Kanawha Company, for and on behalf of the said company, in pursuance of a resolution adopted by the stockholders of said company, in general meeting, on the thirtieth day of August, eighteen hundred and sixty, of the other part, witnesseth:

"Whereas it is a matter of the highest importance to the State of Virginia, that the water line between the Chesapeake Bay and the Ohio River, which will open the great west and southwest and its immense trade to the markets of the world by the shortest, cheapest, safest and most certain route, and lead to an incalculable increase of the direct foreign trade of Virginia, should be promptly completed, the parties of the first part desiring not only to secure to themselves and their associates the profits of the line when completed, but to France the primary advantages of the direct trade with her, which the line must establish, have proposed to purchase the line from Richmond to the Ohio River, with the right and

obligation to complete the same, and the president of the James River and Kanawha Company, and the Board of Public Works of Virginia, concurring in these views, and sympathizing strongly with the parties of the first part, in their desire to establish direct trade with France, the ancient ally of the United States, the said president and directors of the James River and Kanawha Company, have entered into negotiation with the parties of the first part, and have, with the approbation of the Board of Public Works, entered into a provisional agreement with them, as herein set forth. And since it is necessary to procure the approval of the General Assembly to the said agreement, therefore, subject to said approval, the said James River and Kanawha Company do contract and agree with the said parties of the first part as follows—that is to say:

"1. A new company shall be formed by the name and style of 'The Virginia Canal Company,' with a capital stock of not less than twenty, nor more than thirty-five millions of dollars, in shares of one hundred dollars each; to which shall be transferred all the property and franchises of the James River and Kanawha Company—the stockholders in the James River and Kanawha Company, other than the Commonwealth of Virginia to have one share of stock in the said Virginia Canal Company for every two shares of stock they now hold; and the State to transfer to the said Virginia Canal Company all her rights as a stockholder in the said James River and Kanawha Company, upon condition that the new company perform and fulfill the terms and conditions hereinafter imposed.

"2. The Virginia Canal Company shall be organized with a charter similar to the original charter of the James River and Kanawha Company, with such modifications and additions as may be necessary and proper for adapting it to the purposes of the new organization.

"3. The Virginia Canal Company shall clear out the deposits in the present line from Richmond to Buchanan, and repair all the present works, that is, the embankments, aqueducts, bridges, culverts, waste weirs, locks, dams, houses and structures of every kind, repairing those wanting repairs only, and building anew the works requiring to be rebuilt, so that the whole line from Richmond to Buchanan shall be of a depth of not less than five feet at any point, and in all respects in a perfect state of repair.

"4. They shall keep on all the line a sufficient number of dredge boats to keep the water way continually free from deposit and obstructions of every kind, and a sufficient number of extra lock gates and wickets ready to be inserted in case of accident. They shall likewise have weigh locks at not less than three points on the line.

"5. They shall complete the water line of improvement from Buchanan to the Kanawha River, and the improvement of the Kanawha River, so as to make a continuous water line from tidewater at Richmond to the Ohio River; constructing the works on the general plan of the part of the improvement that has already been made, but with the following modifications, to-wit:

"The locks from Buchanan to the Greenbrier River shall be not less than one hundred and twenty feet long between the gates, by twenty feet

wide in the clear, and on the Greenbrier and New Rivers, and on the Kanawha River at and above Lykens' shoals, not less than two hundred feet long between the gates, by forty feet wide in the clear, and the works from Buchanan to the foot of Lykens' shoals on the Kanawha River shall be so constructed as to give a depth of water of not less than seven feet at any point.

"The Kanawha River to be improved from Lykens' shoals to its mouth in such a manner as to secure a depth of water of not less than six feet at all seasons of the year; the channel through the shoals to be eighty feet wide at the bottom, and one hundred and four feet at the top.

"The capacity of the improvement from Richmond to Buchanan shall be enlarged by increasing the depth of the water to not less than seven feet at any point, and by increasing the dimensions of all the present locks to not less than one hundred and twenty feet long between the gates, by twenty feet wide in the clear, or by doubling the locks, and making the new locks of the dimensions aforesaid. But the increase in the dimensions or the doubling of the locks, need not be made, until the locks require reconstruction or the trade of the canal shall demand it.

"The capacity of the Tidewater connection and Richmond dock shall be enlarged, so as to afford adequate accommodation to the trade of the line, by opening a second communication with tidewater by the route of the Haxall Canal, or other suitable route; or instead of that, enlarging or doubling the present locks between the basin and the dock, as well as the present ship lock, in such manner as may be necessary to obtain a proper result; and by constructing all such other works as may be necessary for enlarging the capacity of the dock and tidewater connection for the purpose aforesaid.

"6. The said Virginia Canal Company shall issue to the respective stockholders in the James River and Kanawha Company, other than the State, certificates of stock at the rate of one share in the new company for every two shares held by them in the James River and Kanawha Company, which shall be full satisfaction of all their interest in the last mentioned company; and they shall pay annually to the holders of such certificates, five per centum per annum on the amounts thereof, from the date of the organization of the new company, until the line shall be completed to the Ohio River in the manner before mentioned, and thereafter in lieu of the said five per cent. shall pay them their ratable share of the profits of the company.

"7. The stockholders in the Virginia Canal Company shall enjoy equal rights, except as provided in the next preceding section.

"8. The tolls on the line shall be regulated by the Board of Public Works, or such other authority as the General Assembly may substitute for the control and superintendence of the public works of Virginia: provided, that during the construction of the work the tolls shall not exceed two and a half cents per ton per mile, nor be less than one cent per ton per mile on merchandise and manufactures; shall not exceed one and a half cents per ton per mile, nor be less than five mills per ton per mile on agri-

cultural products; shall not exceed one cent per ton per mile, nor be less than two and a half mills per ton per mile on products of mines and forests; and after the completion of the improvement to the Ohio River, shall not exceed two cents per ton per mile, nor be less than five mills per ton per mile on merchandise and manufactures; shall not exceed one cent per ton per mile, nor be less than two and a half mills per ton per mile on agricultural products; and shall not exceed five mills per ton per mile, nor be less than two and a half mills per ton per mile on products of mines and forests: provided, that these rates shall apply to the through rates, but the tolls on the way trade may be increased one-third: and provided, further, that the toll may be brought below the minimum rate on any article, by the said board or other authority, with the consent of the Virginia Canal Company.

"9. The board for the management of the company shall consist of a president and seven directors, with the privilege to the company to increase the number of directors to twelve; two of the directors shall be appointed by the State of Virginia in such manner as she may by law provide; the other directors shall be appointed by the stockholders, and the president shall also be appointed by the stockholders, but his appointment shall be subject to the approval of the State in such manner as she may by law provide.

"10. The office of the new company shall be at Richmond, Virginia, but a branch may be located at Paris; the dividends and other dues to the American stockholders shall be paid at the office in Richmond. But the dividends and dues of the other stockholders may be paid in Paris or elsewhere, at the pleasure of the new company.

"11. A majority of the directors shall always be present to constitute a board. The proceedings of the board shall be recorded in the English language, at the office in Richmond, and be at all times open to the inspection of the stockholders, and the State, by such officer as she may appoint.

"12. The said Virginia Canal Company shall be organized within six months from the passage of the act of the Legislature incorporating it, and within the same time shall commence bona fide the work of construction at Buchanan and on the Kanawha River, and shall also within the same time commence bona fide the repairs of the line between Richmond and Buchanan; and shall complete the construction of the line to Covington and the repairs of the line from Richmond to Buchanan, within three years from the time of commencement aforesaid, and complete the Kanawha improvement from Loup Creek shoals to the mouth of the river within four years from the time of commencement aforesaid; and shall complete the entire line from Richmond to the mouth of the Kanawha River, in all respects, except the enlargement of the capacity of the canal from Richmond to Buchanan, within eight years from the time of commencement aforesaid; and shall complete the enlargement of the capacity of the Richmond dock and tidewater connection, as well as the enlargement of the capacity of the canal from Richmond to Buchanan, by deepening the canal, as herein above provided, within ten years from the said time of commencement.

"13. The said company shall not have the power by mortgage, deed of trust, or other contract, to create a lien upon its works and property, except that hereinafter created in favor of the Commonwealth of Virginia, and shall not be competent to sell the same without the assent of the General Assembly of Virginia.

"14. The said company shall, in consideration of the transfer aforesaid by the State of Virginia of all her rights as a stockholder in the James River and Kanawha Company, pay into the treasury of the State, semi-annually forever, the sum of sixty-seven thousand five hundred dollars; and as a guarantee for the faithful compliance with the stipulations of this agreement, they shall deposit with the treasurer of Virginia the sum of one million of dollars in the six per cent. registered stock of the Commonwealth of Virginia, to be held by him upon the following terms and conditions, that is to say: The interest upon the said stock, while on deposit, shall be paid to the said company. When the canal shall have been completed to the town of Covington, and the Kanawha improvement completed from Loup Creek shoal to the mouth of the river, if within the times prescribed, one-half of the said sum shall be returned to the said company: provided, the annuity to the State of Virginia, and the five per centum interest to the private stockholders, hereinbefore provided for, shall have been punctually paid; and if the same shall not have been punctually paid, then so much of the said sum of one million of dollars as may be necessary shall be appropriated to the payment of the same, and the residue returned to the said M. de Bellot des Minieres and his associates, or to the Virginia Canal Company, as may be proper; but if the said company shall fail to complete the construction of the line to Covington, and the repairs of the line from Richmond to Buchanan, within three years from the time of the commencement herein prescribed, or shall fail to complete the Kanawha improvement from Loup Creek shoals to the mouth of the river within four years from the time of commencement herein prescribed, or shall fail to complete the entire line from Richmond to the mouth of Kanawha River, in all respects, except the enlargement of the capacity of the canal from Richmond to Buchanan, within eight years from the time of commencement herein prescribed, or shall fail to complete the enlargement of the Richmond dock and tidewater connection, as well as the deepening of the canal to Buchanan, within ten years from the time of commencement herein prescribed, the sum of one million of dollars shall be retained and paid to the Commonwealth of Virginia as stipulated damages in money for such failure; and all the work which may have been done in repair and construction, as well as all the rights which the said Virginia Canal Company shall have acquired in the property and franchises of the James River and Kanawha Company, shall be forfeited, and revert to the latter company as at present organized, which company shall be thereupon reinstated in all its rights, as if this arrangement had never been made, and shall have full right and authority to re-enter upon and resume the control of the whole line of improvement; and for that purpose, the present organization of the James River and Kanawha Company shall be continued: provided,

however, that if the said Virginia Canal Company shall be unable to complete the said water line improvement from Richmond to the Ohio River within eight years as aforesaid, or to complete the enlargement of the Richmond dock and tidewater connection, and deepening of the canal from Richmond to Buchanan, within ten years as aforesaid, they may have two years' extension of time in each case, by paying into the treasury of the Commonwealth of Virginia, for the said Commonwealth, before the expiration of the said period of eight years, a half million of dollars, if they require the extension of time for the completion of the water line as well as for the said enlargement; or by so paying one hundred thousand dollars before the expiration of ten years, if they require the extension of time only as to the enlargement aforesaid; which said sums are agreed upon as liquidated damages to be paid to the said Commonwealth in the contingencies aforesaid, for the loss sustained by such delay or delays in the completion of the said works as herein required; provided, however, that if the said Virginia Canal Company shall have proceeded in good faith to execute the said works, then the General Assembly may suspend the said forfeiture, and allow to the said company such further time as to it may seem just and proper, to complete the said works.

"15. The said Bellot des Minieres, Brothers and Company shall pay to the Commonwealth of Virginia so much of the three hundred thousand dollars of State bonds appropriated by the act of the General Assembly of Virginia, passed March twenty-third, eighteen hundred and sixty, for the improvement of the Kanawha River, as shall have been issued and sold, and expended bona fide on the improvement when they shall become entitled to the property and revenues of the James River and Kanawha Company; and upon payment thereof, the said Commonwealth shall release the mortgage given by the said James River and Kanawha Company on the said Kanawha improvement to secure the payment of the said bonds.

"16. As soon as the said M. de Bellot des Minieres and his associates shall have been regularly incorporated according to the laws of France and Virginia, and satisfactory authentication of that fact communicated to the president of the James River and Kanawha Company and the Board of Public Works, and shall have deposited with the treasurer of Virginia one million of dollars in the six per cent. registered stock of the Commonwealth, and shall have deposited in one or more of the banks of the city of Richmond, to the credit of the president and directors of the James River and Kanawha Company for the purpose of paying the floating debt of the company, the sum of four hundred thousand dollars, to be applied to the payment of the said floating debt as far as necessary, and the balance, if any, to be returned to them; and shall also pay into the treasury of Virginia the amount agreed to be paid by them under the next preceding section—then the James River and Kanawha Company shall by proper deeds convey its entire property of every kind, to the said Virginia Canal Company, subject to the charges before mentioned in favor of the present private stockholders and the Commonwealth of Virginia, and subject to any present subsisting contracts for the use of the water of the canal, and subject to all the provisions of this agreement: And until this conveyance shall be

made, the James River and Kanawha Company shall manage the said property, effects and revenues under the existing laws, the said M. de Bellot des Minieres and his associates furnishing all the means and money that may be necessary to carry on the business of the company, complete Bosher's dam, the Joshua Falls dam, the dam at Lynchburg, and the North River improvement, and keeping the canal in proper repair—they receiving credit for all the revenues of the company. But the president and directors of the present company shall have no power or authority to charge the property of the company with any debt, except for the purpose of keeping the line in proper repair and working condition, and completing the dams and North River improvement, as hereinbefore mentioned.

"17. The said Virginia Canal Company may at any time discharge itself from the annuity to the State of Virginia, by the payment into the treasury of Virginia of the sum of two million two hundred and fifty thousand dollars in specie, but until the same shall be paid, the annuity of one hundred and thirty-five thousand dollars to the Commonwealth shall be forever a charge upon the whole property of the company, and the Legislature may provide by law in what manner the payment of the said annuity shall be enforced.

"18. The European parties and stockholders may, as between themselves, determine what the relative rights and obligations shall be.

"19. The stockholders in the Virginia Canal Company shall be required by their charter to hold at least one general meeting every year in the city of Richmond.

"20. When this agreement shall be approved by the General Assembly and a charter shall be granted as provided in the first and second sections thereof, the said agreement shall be binding upon all the parties thereto, without any further action on the part of the stockholders or directors of the James River and Kanawha Company; and the said James River and Kanawha Company binds itself to use its best efforts to obtain at the earliest day possible, the approval of this agreement and of the charter as provided for, by the General Assembly; and in the meantime the said agreement shall be obligatory upon the said James River and Kanawha company to the full extent that the said company has the legal authority to act without the approval of the General Assembly.

"And to prevent delay in the commencement of the works hereinbefore contracted to be executed, the said parties of the first part shall be authorized to proceed forthwith in their said undertaking; and if the General Assembly shall fail to approve the said agreement, and to grant said charter, then the James River and Kanawha Company binds itself to issue bonds under the act of the twenty-third day of March, eighteen hundred and sixty, to the said parties of the first part for an amount equal to the principal sum which may have been expended upon its works as contemplated in this agreement, and the interest thereon from the time when the same shall have been expended until the repayment in bonds as aforesaid; and the said James River and Kanawha Company shall thereupon be restored

to all the rights conferred by its charter, as if this contract had not been made, and the said contract shall thereafter be null and void.

"In testimony whereof, the said Ernest de Bellot des Minieres, acting for himself and the firm of Bellot des Minieres, Brothers and Company, hath hereto subscribed his name and annexed his seal, and the said Thomas H. Ellis, president of the James River and Kanawha Company, acting under authority as aforesaid, hath subscribed his name and caused the seal of the company to be affixed, the day and year first above written, at Richmond, Virginia.

E. DE BELLOT DES MINIERES. (Seal)
THOMAS H. ELLIS, Pres. J. R. & K. Co.

(Corporate Seal)

And whereas the General Assembly of the Commonwealth of Virginia approved the object and views of the contracting parties, and are disposed to give to their contract validity and effect, except so far as it may be modified by this act: Therefore,

COMPANY INCORPORATED; GENERAL POWERS; RESTRICTIONS THEREON.

1. Be it enacted, that when the Board of Public Works shall be satisfied that the minimum capital of twenty millions of dollars has been raised as provided for in the next chapter, then, in compliance with the first article of said agreement, the persons constituting the firm and style of Bellot des Minieres, Brothers & Co. and such persons as they may admit into association with them, together with the corporate and individual stockholders of the present James River and Kanawha Company (other than the Commonwealth of Virginia), and such persons as may become subscribers to the capital stock hereafter authorized, and their successors and assigns, shall be and are hereby incorporated into a company by the name and style of "The Virginia Canal Company;" and by that name shall have perpetual succession and a common seal, may sue and be sued, plead and be impleaded, purchase and hold, sell and convey real and personal property; and shall be, to every intent and purpose in law, the successors of the present James River and Kanawha Company: provided, that the corporate powers shall not take effect until the minimum stock shall be taken: provided, however, that they shall hold no real estate, except that which by this Company, subject to the charges before mentioned in favor of the present act, or some other act of the General Assembly, may be vested in them, or they may be authorized to acquire for the purpose of the improvements which they are required to make; and that they shall in no wise deal as bankers or merchants or in buying and selling any produce or commodities whatsoever, except such as is obviously convenient and proper for them to purchase and sell in the regular performance of the duties required of them by this act; and that they shall not be engaged in the establishment or conduct of manufactures, further than for the supply of their own consumption

and that of the persons in their service, and in letting to farm or lease sites for mills and other machinery, and water for their use.

2. The stockholders in general meeting shall have power to make all such by-laws, rules and regulations, not inconsistent with the constitution or laws of the land, as they may deem proper, for the well ordering of the affairs of the company; for the protection and preservation of their property, and for the maintenance of good order and good police among officers, agents, servants and laborers, and among the boatmen and others who use their canal and other works.

3. The said company shall not subscribe to the stock of any other company, unless it be specially allowed by law; but this prohibition shall not prevent it from receiving stocks or other property in satisfaction of any judgment, order or decree, or as collateral security for or in payment of any debt, or from purchasing stock or other property at any sale made for its benefit. If it so receives shares of its own stock, it may either extinguish the same or sell and transfer such shares to a purchaser. While, however, it holds such shares of its own stock, no vote shall be given thereon.

WORKS AND PROPERTY NOT TO BE ENCUMBERED OR SOLD.

4. The said company shall not have the power, by mortgage, deed of trust or other contracts, to create a lien upon its works and property, except that hereinafter created in favor of the Commonwealth of Virginia, and shall not be competent to sell the same without the assent of the General Assembly of Virginia.

PROVISION FOR REPAYMENT OF MONEY EXPENDED ON KANAWHA IMPROVEMENT.

5. The Kanawha River shall remain subject to all the existing laws in relation thereto, and unaffected by this act, until the completion of the work now under contract and in progress upon said river; provided, such work shall be completed before the first day of January, eighteen hundred and sixty-three; but when the said Virginia Canal Company shall be fully organized and vested with the control of the residue of the line other than the Kanawha River, the term of office of the present members of the Kanawha board shall expire, and members of said board shall be appointed, two by the Virginia Canal Company, and three by the Board of Public Works, whose term of office shall be the same as now prescribed by law, all of whom shall be citizens of the State, and residents of the Kanawha Valley; and the present members of the Kanawha board may be reappointed as members of the new board, and such new Kanawha board shall have control of the Kanawha River until the payment by the Virginia Canal Company of the money hereinafter provided to be paid on account of the Kanawha River. Immediately after the completion of the work now in progress on the Kanawha River, or on the first day of January, eighteen

hundred and sixty-three, if such work shall not be completed before that time, the said Virginia Canal Company shall pay to the Commonwealth of Virginia so much of the appropriation of March twenty-third, eighteen hundred and sixty, for the improvement of the Kanawha River, as may have been bona fide expended in the construction of said improvement; and upon payment of said amount, the said Virginia Canal Company, by the operation of this act and the conveyance hereinafter authorized, shall be invested with all the rights, powers, franchises and privileges of the James River and Kanawha Company, in and to said Kanawha River; and upon such payment, the said Commonwealth shall release the mortgage given by the said James River and Kanawha Company on the said Kanawha improvement, to secure the payment of the said bonds. Such release shall be executed by the Board of Public Works as soon as satisfactory evidence is submitted to them of the payment aforesaid.

TRANSFER OF WORKS BY JAMES RIVER AND KANAWHA COMPANY; PRECEDENT CONDITIONS.

6. When the Board of Public Works shall be satisfied that the minimum capital as provided in the next chapter, has been raised as therein required, and the said M. de Bellot des Minieres and his associates shall have deposited with the State of Virginia, in the manner prescribed by law, one million of dollars in the six per cent. registered stock of the Commonwealth, and shall have deposited in one or more of the banks of the city of Richmond, to the credit of the president and directors of the James River and Kanawha Company, for the purpose of paying the floating debt of that company, the sum of four hundred thousand dollars, to be applied to the payment of the said floating debt as far as necessary, and the balance, if any, to be returned to the said M. de Bellot des Minieres and his associates, and satisfactory evidence of the performance of said conditions shall have been furnished the Board of Public Works, then the said James River and Kanawha Company shall, by proper deeds, convey its entire property, privileges and franchises of every kind to the said Virginia Canal Company, subject to the provisions and requirements of the fifth section of this chapter, and to the conditions hereafter required in this act, and also to any present subsisting contracts for the use of the water of the canal, or for any other purpose.

SUITS DEPENDING; HOW PROCEEDED WITH.

7. All causes and matters which shall be depending and undetermined in any court in this Commonwealth, in which the James River and Kanawha Company are or may be parties, plaintiff or defendant, on the day when the said transfer is made, shall be proceeded in, tried and determined as if the same had been commenced by or against the said Virginia Canal Company.

TRANSFER OF RIGHTS OF STATE OF VIRGINIA AND RELEASE OF ITS SECURITIES: CONDITIONS.

8. When the Board of Public Works shall be satisfied that the conditions prescribed in the sixth section have been fully complied with, and that the minimum capital, as provided for in the next chapter, shall have been raised as therein required, they shall transfer in like manner to the said Virginia Canal Company, all the rights which the State of Virginia has as a stockholder in the James River and Kanawha Company; and shall furthermore release all mortgages, deeds of trust or other contracts, except the mortgage relative to the Kanawha River, by which any lien has been created to the Commonwealth upon the works and property of the said James River and Kanawa Company, subject only to the encumbrances, limitations and restrictions by this act imposed.

RIGHTS OF NEW COMPANY AFTER TRANSFER.

9. The company hereby incorporated, thenceforward shall be entitled to all the tolls, rents and others emoluments, rights, franchises, privileges and immunities, which are now enjoyed by the said James River and Kanawha Company, subject to the provisions and limitations of the fifth section of this chapter. And the president and directors of the new company, their officers and agents, shall take possession of the property and works transferred as aforesaid, for the benefit of the Virginia Canal Company.

ANNUITY TO THE STATE.

10. The said Virginia Canal Company shall, in consideration of the transfer aforesaid, by the State of Virginia, pay into the treasury of the State, in the mode prescribed by law, semi-annually forever, the sum of sixty-seven thousand five hundred dollars. But the said company may at any time discharge itself from the said annuity by the payment into the said treasury of the sum of two million two hundred and fifty thousand dollars in specie; but until the same shall be paid, the said annuity shall be forever a charge upon the whole property and franchises of the company; and the Legislature may provide by law in what manner the payment of the said annuity shall be enforced.

SUM TO BE PAID TO OTHER STOCKHOLDERS.

11. The Virginia Canal Company shall furthermore take the said property so to be transferred to them, subject to the payment, to the corporate and individual stockholders mentioned in the second chapter, of five per centum per annum on the amounts of the certificates of stock held by each respectively, to be computed from the date of the organization of the said Virginia Canal Company, until the water line hereinafter mentioned shall be completed to the Ohio River, as herein prescribed; and thereafter, in lieu of the said five per cent., shall pay to the said stockholders their ratable

share of the profits of the company. And for failure to perform this provision, the company may be proceeded against as provided hereafter in the seventh chapter.

* * * * * * * *

This act shall be in force from its passage.

CLASS G.

DEFENDANT'S EXHIBIT No. 7, 1863, B.

Acts of Assembly of Virginia 1865-66 and 1866-67.

The following is found on page 93 of said Acts, pertaining to the Virginia Canal Company, etc.:

Chap. 29.—An Act to amend and re-enact the act entitled an act to incorporate the Virginia Canal Company, and to transfer the rights and franchises of the James River and Kanawha Company thereto, passed March 29, 1861.*

Passed February 3, 1866.

Be it enacted by the General Assembly, That the act entitled an act to incorporate the Virginia Canal Company, and to transfer the rights and franchises of the James River and Kanawha Company thereto, passed March 29, 1861, be amended and re-enacted so as to read as follows:

Chapter 1—OF THE INCORPORATION OF THE COMPANY.

Whereas the James River and Kanawha Company, at their called meeting in the month of August, eighteen hundred and sixty, authorized an agreement to be entered into, and which was executed by the president of said company, in pursuance of such authority, between himself and Ernest de Bellot des Minieres and his associates, under the firm and style of Bellot des Minieres, Brothers and Company, of France, and to which the Board of Public Works of this State gave its assent, as evidenced by the signature of its president thereto; which agreement is in the following words:

"An executory agreement, entered into this first day of September, in the year eighteen hundred and sixty, between Ernest de Bellot des Minieres, for himself and his associates, under the firm and style of Bellot des

*The word "chapter" as used in this act, applies to divisions of the same.

Minieres, Brothers and Company, of France, of the one part, and Thomas H. Ellis, president of the James River and Kanawha Company, for and on behalf of the said company in pursuance of a resolution adopted by the stockholders of said company, in general meeting, on the thirtieth day of August, eighteen hundred and sixty, of the other part, witnesseth:

"Whereas it is a matter of the highest importance to the State of Virginia, that the water line between the Chesapeake Bay and Ohio River, which will open the great West and Southwest and its immense trade to the markets of the world, by the shortest, cheapest, safest and most certain route, and lead to an incalculable increase of the direct foreign trade of Virginia, should be promptly completed, the parties of the first part desiring not only to secure to themselves and their associates the profits of the line when completed, but to France the primary advantage of the direct trade with her, which the line must establish, have proposed to purchase the line from Richmond to the Ohio River, with the right and obligation to complete the same; and the president and directors of the James River and Kanawha Company and the Board of Public Works of Virginia concurring in these views, and sympathizing strongly with the parties of the first part, in their desire to establish direct trade with France, the ancient ally of the United States, the said president and directors of the James River and Kanawha Company have entered into negotiations with the parties of the first part, and have, with the approbation of the Board of Public Works, entered into a provisional agreement with them as herein set forth. And since it is necessary to procure the approval of the General Assembly to the said agreement, therefore, subject to said approval, the said James River and Kanawha Company do contract and agree with the said parties of the first part as follows; that is to say:

"1. A new company shall be formed, by the name and style of The Virginia Canal Company, with a capital stock of not less than twenty nor more than thirty-five millions of dollars, in shares of one hundred dollars each; to which shall be transferred all the property and franchises of the James River and Kanawha Company: the stockholders in the James River and Kanawha Company, other than the Commonwealth of Virginia, to have one share of stock in the said Virginia Canal Company for every two shares of stock they now hold; and the State to transfer to the said Virginia Canal Company all her rights as a stockholder in the James River and Kanawha Company upon condition that the new company perform and fulfill the terms and conditions hereinafter imposed.

"2. The Virginia Canal Company shall be organized with a charter similar to the original charter of the James River and Kanawha Company, with such modifications and additions as may be necessary and proper for adapting it to the purpose of the new organization.

"3. The Virginia Canal Company shall clear out the deposits in the present line from Richmond to Buchanan, and repair all the present works: that is, the embankment, aqueducts, bridges, culverts, waste weirs, locks,

dams, houses and structures of every kind, repairing those wanting repairs only, and building anew the works requiring to be rebuilt, so that the whole line from Richmond to Buchanan shall be of a depth of not less than five feet at any point, and in all respects in a perfect state of repair.

"4. They shall keep on all the line a sufficient number of dredge boats to keep the water way continually free from deposits and obstructions of every kind, and a sufficient number of extra lock gates and wickets ready to be inserted in case of accident. They shall likewise have weigh locks at not less than three points on the line.

"5. They shall complete the water line of improvement from Buchanan to the Kanawha River, and the improvement of the Kanawha River, so as to make a continuous water line from tidewater at Richmond to the Ohio River, constructing the works on the general plan of the part of the improvement that has already been made, but with the following modifications, to-wit:

"The locks from the Buchanan to the Greenbrier River shall be not less than one hundred and twenty feet long between the gates, by twenty feet wide in the clear, and on the Greenbrier and New Rivers, and on the Kanawha River at and above Lykens' shoals, not less than two hundred feet long between the gates, by forty feet wide in the clear, and the works from Buchanan to the foot of Lykens' shoals on the Kanawha River shall be so constructed as to give a depth of water of not less than seven feet at any point.

"The Kanawha River to be improved from Lykens' shoals to its mouth, in such manner as to secure a depth of water of not less than six feet at all seasons of the year; the channel through the shoals to be eighty feet wide at the bottom and one hundred and four feet wide at the top.

"The capacity of the improvement from Richmond to Buchanan shall be enlarged by increasing the depth of the water to not less than seven feet at any point, and by increasing the dimensions of all the present locks to not less than one hundred and twenty feet long between the gates, by twenty feet wide in the clear, or by doubling the locks, and making the new locks of the dimensions aforesaid. But the increase in the dimensions or the doubling of the locks need not be made until the locks require reconstruction or the trade of the canal shall demand it.

"The capacity of the tidewater connection and the Richmond dock shall be enlarged so as to afford adequate accommodation to the trade of the line, by opening a second communication with the tidewater by the route of the Haxall Canal, or other suitable route; or instead of that, enlarging or doubling the present locks between the basin and the dock, as well as the present shiplock, in such manner as may be necessary to obtain a proper result; and by constructing all such other works as may be necessary for enlarging the capacity of the docks and tidewater connection for the purpose aforesaid."

"6. The said Virginia Canal Company shall issue to the respective stockholders in the James River and Kanawha Company, other than the State, certificates of stock at the rate of one share in the new company

for every two shares held by them in the James River and Kanawha Company, which shall be full satisfaction of all their interests in the last mentioned company; and they shall pay annually to the holders of such certificates five per centum per annum on the amounts thereof, from the date of the organization of the new company until the line shall be completed to the Ohio River in the manner before mentioned; and thereafter, in lieu of the said five per centum, shall pay them their ratable share of the profits of the company.

"7. The stockholders in the Virginia Canal Company shall enjoy equal rights, except as provided in the next preceding section.

"8. The tolls on the line shall be regulated by the Board of Public Works, or such other authority as the General Assembly may substitute for the control and superintendence of the public works of Virginia, provided, that during the construction of the work the tolls shall not exceed two and one-half cents per ton per mile, nor be less than one cent per ton per mile on merchandise and manufactures; shall not exceed one and a half cents per ton per mile, nor be less than five mills per ton per mile on agricultural products; shall not exceed one cent per ton per mile, nor be less than two and a half mills per ton per mile on products of mines and forests; and after the completion of the improvement to the Ohio River, shall not exceed two cents per ton per mile, nor be less than five mills per ton per mile on merchandise and manufactures, shall not exceed one cent per ton per mile, nor be less than two and a half mills per ton per mile on agricultural products; and shall not exceed five mills per ton per mile, nor be less than two and a half mills per ton per mile on products of mines and forests: provided, that these rates shall apply to the through rates, but the tolls on the way trade may be increased one-third; and provided, further, that the tolls may be brought below the minimum rate on any article, by the said board or authority, with the consent of the Virginia Canal Company.

"9. The board for the management of the company shall consist of a president and seven directors, with the privilege to the company to increase the number of directors to twelve; two of the directors shall be appointed by the State of Virginia in such manner as she may by law provide; the other directors shall be appointed by the stockholders, and the president shall also be appointed by the stockholders; but his appointment shall be subject to the approval of the State, in such manner as she may by law provide.

"10. The office of the new company shall be at Richmond, Virginia, but a branch may be located at Paris. The dividends and other dues to the American stockholders shall be paid at the office in Richmond; but the dividends and dues of the other stockholders may be paid in Paris, or elsewhere, at the pleasure of the new company.

"11. A majority of the directors shall always be present to constitute a board. The proceedings of the board shall be recorded in the English language, at the office in Richmond, and be at all times open to the inspec-

"12. The said Virginia Canal Company shall be organized within six

months from the passage of the act of the Legislature incorporating it, and within the same time shall commence bona fide the work of construction at Buchanan and on the Kanawha River; and shall also, within the same time, commence bona fide the repairs of the line between Richmond and Buchanan; and shall complete the construction of the line to Covington and the repairs of the line from Richmond to Buchanan, within three years from the time of commencement aforesaid, and to complete the Kanawha improvement from Loup Creek shoals to the mouth of the river within four years from the time of commencement aforesaid; and shall complete the entire line from Richmond to the mouth of the Kanawha River, in all respects, except the enlargement of the capacity of the canal from Richmond to Buchanan, within eight years from the time of commencement aforesaid; and shall complete the enlargement of the capacity of the Richmond dock and tidewater connection, as well as the enlargement of the capacity of the canal from Richmond to Buchanan, by deepening the canal, as hereinabove provided, within ten years from the said time of commencement.

"13. The said company shall not have the power, by mortgage, deed of trust or other contract, to create a lien upon its works and property, except that hereinafter created in favor of the Commonwealth of Virginia, and shall not be competent to sell the same without the assent of the General Assembly of Virginia.

"14. The said company shall, in consideration of the transfer aforesaid by the State of Virginia of all her rights as a stockholder in the James River and Kanawha Company, pay into the treasury of the State semi-annually forever, the sum of sixty-seven thousand five hundred dollars; and as a guarantee for the faithful compliance with the stipulation of this agreement, they shall deposit with the treasurer of Virginia the sum of one million of dollars in the six per centum registered stock of the Commonwealth of Virginia, to be held by him upon the following terms and conditions; that is to say: the interest upon the said stock, while on deposit, shall be paid to the said company. When the canal shall have been completed to the town of Covington, and the Kanawha improvement completed from Loup Creek shoals to the mouth of the river, if within the time prescribed, one-half of the said sum shall be returned to the said company: and when the entire line shall have been completed in the manner before mentioned, to the Ohio River, if within the prescribed time, the other half shall be returned to the said company; provided the annuity to the State of Virginia, and the five per centum interest to the private stockholders, hereinbefore provided for, shall have been punctually paid; and if the same shall not have been punctually paid, then so much of the said sum of one million of dollars as may be necessary shall be appropriated to the payment of the same, and the residue returned to the said M. de Bellot des Menieres and his associates, or to the Virginia Canal Company, as may be proper; but if the said company shall fail to complete the construction of the line to Covington, and the repairs of the line from Richmond to Buchanan, within three years from the time of the commencement herein

prescribed, or shall fail to complete the Kanawha improvement from Loup Creek shoals to the mouth of the river within four years from the time of commencement herein prescribed, or shall fail to complete the entire line from Richmond to the mouth of Kanawha River, in all respects, except the enlargement of the capacity of the canal from Richmond to Buchanan, within eight years from the commencement herein prescribed, or shall fail to complete the enlargement of the Richmond dock and tidewater connection, as well as the deepening of the canal to Buchanan, within ten years from the time of commencement herein prescribed, the said sum of one million of dollars shall be retained and paid to the Commonwealth of Virginia as stipulated damages in money for such failure; and all the work which may have been done in repair and construction, as well as all the rights which the said Virginia Canal Company shall have acquired in the property and franchises of the James River and Kanawha Company, shall be forfeited and revert to the latter company as at present organized; which company shall be thereupon reinstated in all its rights as if this arrangement had never been made, and shall have full right and authority to re-enter upon and resume the control of the whole line of improvement; and for that purpose the present organization of the James River and Kanawha Company shall be continued: provided, however, that if the said Virginia Canal Company shall be unable to complete the said water line improvement from Richmond to the Ohio River within eight years as aforesaid, or to complete the enlargement of the Richmond dock and Tidewater connection, and deepening of the canal from Richmond to Buchanan, within ten years as aforesaid, they may have two years' extension of time in each case, by paying into the treasury of the Commonwealth of Virginia, for the said Commonwealth, before the expiration of the said period of eight years, a half million of dollars, if they require the extension of time for the completion of the water line as well as for the said enlargement; or by so paying one hundred thousand dollars before the expiration of ten years, if they require the extension of time only as to the enlargement aforesaid; which said sums are agreed upon as liquidated damages to be paid to the said Commonwealth in the contingencies aforesaid, for the loss sustained by such a delay or delays in the completion of the said works as herein required: provided, however, that if the said Virginia Canal Company shall have proceeded in good faith to execute the said works, then the General Assembly may suspend the said forfeiture, and allow to the said company such further time as to it may seem just and proper, to complete the said works.

"15. The said Bellot des Minieres, Brothers and Company shall pay to the Commonwealth of Virginia so much of the three hundred thousand dollars of State bonds appropriated by the act of the General Assembly of Virginia, passed March twenty-third, eighteen hundred and sixty, for the improvement of the Kanawha River, as shall have been issued and sold, and expended bona fide on the improvement, when they shall become entitled to the property and revenues of the James River and Kanawha Company, and upon a payment thereof, the said Commonwealth shall release the mort-

gages given by the said James River and Kanawha Company on the said Kanawha improvement to secure the payment of the said bonds.

"16. As soon as the said M. de Bellot des Minieres and his associates shall have been regularly incorporated according to the laws of France and Virginia, and satisfactory authentication of that fact communicated to the president of the James River and Kanawha Company and the Board of Public Works, and shall have deposited with the treasurer of Virginia one million of dollars in the six per centum registered stock of the Commonwealth, and shall have deposited in one or more of the banks of the city of Richmond, to the credit of the president and directors of the James River and Kanawha Company, for the purpose of paying the floating debt of the company, the sum of four hundred thousand dollars, to be applied to the payment of the said floating debt as far as necessary, and the balance, if any, to be returned to them; and shall also pay into the treasury of Virginia the amount agreed to be paid by them under the next preceding section—then the James River and Kanawha Company shall, by proper deeds, convey its entire property of every kind to the said Virginia Canal Company subject to the charges before mentioned in favor of the present private stockholders and the Commonwealth of Virginia, and subject to any present subsisting contracts for the use of the water of the canal, and subject to all the provisions of this agreement. And until this conveyance shall be made, the James River and Kanawha Company shall manage said property, effects and revenues under the existing laws, the said M. de Bellot des Minieres and his associates furnishing all the means and money that may be necessary to carry on the business of the company, complete Bosher's dam, the Joshua Falls dam, the dam at Lynchburg, and the North River improvements, and keeping the canal in proper repair—they receiving credit for all the revenues of the company. But the president and directors of the present company shall have no power or authority to charge the property of the company with any debt, except for the purpose of keeping the line in proper repair and working condition, and completing the dams at North River improvement as hereinbefore mentioned.

"17. The said Virginia Canal Company may at any time discharge itself from the annuity to the State of Virginia by the payment into the treasury of Virginia of the sum of two million two hundred and fifty thousand dollars in specie; but until the same shall be paid, the annuity of one hundred and thirty-five thousand dollars to the Commonwealth shall be forever a charge upon the whole property of the company, and the Legislature may provide by law in what manner the payment of the said annuity shall be enforced.

"18. The European parties and stockholders may, as between themselves, determine what their relative rights and obligations shall be.

"19. The stockholders in the Virginia Canal Company shall be required by their charter to hold at least one general meeting every year in the city of Richmond.

"20. When this agreement shall be approved by the General Assembly, and a charter shall be granted as provided in the first and second sections

thereof, the said agreement shall be binding upon all the parties thereto, without any further action on the part of the stockholders or directors of the James River and Kanawha Company; and the said James River and Kanawha Company binds itself to use its best efforts to obtain, at the earliest day possible, the approval of this agreement and of the charter as provided for, by the General Assembly; and, in the meantime, the said agreement shall be obligatory upon the said James River and Kanawha Company, to the full extent of the said company has the legal authority to act without the approval of the General Assembly.

"And to prevent delay in the commencement of the works hereinbefore contracted to be executed, the said parties of the first part shall be authorized to proceed forthwith in their said undertakings; and if the General Assembly shall fail to approve the said agreement, and to grant said charter, then the James River and Kanawha Company binds itself to issue bonds, under the act of the twenty-third day of March, eighteen hundred and sixty, to the parties of the first part, for an amount equal to the principal sum, which may have been expended upon its works as contemplated in this agreement, and the interest thereon from the time when the same shall have been expended until the repayment in bonds as aforesaid; and the said James River and Kanawha Company shall thereupon be restored to all the rights conferred by its charter, as if this contract had not been made, and the said contract shall thereafter be null and void.

"In testimony whereof, the said Ernest de Bellot des Minieres, acting for himself and the firm of Bellot des Minieres, Brothers and Company, hath hereto subscribed his name and annexed his seal, and the said Thomas H. Ellis, president of the James River and Kanawha Company, acting under authority as aforesaid, hath subscribed his name and caused the seal of the company to be affixed, the day and year first above written, at Richmond, Virginia.

E. DE BELLOT DES MINIERES. (Seal)
THOMAS H. ELLIS, Pres. J. R. & K. Co."

(Corporate Seal)

And whereas the General Assembly of the Commonwealth of Virginia approve the objects and views of the contracting parties, and are disposed to give to their contract validity and effect, except so far as it may be modified by this act: Therefore,

COMPANY INCORPORATED: GENERAL POWERS; RESTRICTIONS THEREON.

1. Be it enacted, That when the Board of Public Works shall be satisfied that the minimum capital of twenty millions of dollars has been raised as provided for in the next chapter, then, in compliance with the first article of said agreement, the persons constituting the firm and style of Bellot des Minieres, Brothers and Company, and such persons as they may admit into association with them, together with the corporate and individual stock-

holders of the present James River and Kanawha Company (other than the Commonwealth of Virginia), and such persons as may become subscribers to the capital stock hereafter authorized, and their successors and assigns, shall be and are hereby incorporated into a company, by the name and style of the Virginia Canal Company; and by that name shall have perpetual succession and a common seal; may sue and be sued, plead and be impleaded, purchase and hold, sell and convey real and personal property; and shall be, to every intent and purpose, in law, the successors of the present James River and Kanawha Company; provided, that the corporate powers shall not take effect until the minimum stock shall be taken: provided, however, that they shall hold no real estate, except that which by this act, or some other act of the General Assembly, may be vested in them, or they may be authorized to acquire for the purpose of the improvements which they are required to make; and that they shall in no wise deal as bankers or merchants, or in buying and selling any produce or commodities whatsoever, except such as it is obviously convenient and proper for them to purchase and sell in the regular performance of the duties required of them by this act; and that they shall not be engaged in the establishment or conduct of manufactures, further than for the supply of their own consumption and that of the persons in their service, and in letting to farm or lease sites for mills and other machinery, and water for their use.

2. The stockholders in general meeting shall have power to make all such by-laws, rules and regulations not inconsistent with the constitution or laws of the land, as they may deem proper, for the well ordering of the affairs of the company, for the protection and preservation of their property, and for the maintenance of good order and good police among their officers, agents, servants and laborers, and among the boatmen and others who use their canals and other works.

3. The said company shall not subscribe to the stock of any other company, unless it be specially allowed by law; but this prohibition shall not prevent it from receiving stocks or other property in satisfaction of any judgment, order or decree, or as collateral security for or in payment of any debt, or from purchasing stock or other property at any sale made for its benefit. If it so receive shares of its own stock, it may either extinguish the same, or sell and transfer such shares to a purchaser. While, however, it holds such shares of its own stock, no vote shall be given thereon.

WORKS AND PROPERTY NOT TO BE ENCUMBERED OR SOLD.

4. The said company shall not have the power by mortgage, deed of trust or other contract, to create a lien upon its works and property, except that hereinafter created in favor of the Commonwealth of Virginia, and shall not be competent to sell the same without the assent of the General Assembly of Virginia.

PROVISION FOR REPAYMENT OF MONEY EXPENDED ON KANAWHA IMPROVEMENT.

5. The Kanawha River shall remain subject to all the existing laws in relation thereto, and unaffected by this act, until the completion of the work now under contract and in progress upon said river: provided, such work shall be completed before the first day of January, eighteen hundred and sixty-eight, but when the said Virginia Canal Company shall be fully organized and vested with the control of the residue of the line other than the Kanawha River, the term of office of the present members of the Kanawha board shall expire, and members of said board shall be appointed, two by the Virginia Canal Company, and three by the Board of Public Works, whose term of office shall be the same as now prescribed by law, all of whom shall be citizens of the State, and residents of the Kanawha valley; and the present members of the Kanawha board may be reappointed as members of the new board, and such new Kanawha board shall have control of the Kanawha River until the payment by the Virginia Canal Company of the money hereinafter provided to be paid on account of the Kanawha River. Immediately after the completion of the work now in progress on the Kanawha River, or on the first day of January, eighteen hundred and sixty-eight, if such work shall not be completed before that time, the said Virginia Canal Company shall pay to the Commonwealth of Virginia so much of the appropriation of March twenty-third, eighteen hundred and sixty, for the improvement of the Kanawha river, as may have been bona fide expended in the construction of said improvement; and upon payment of said amount the said Virginia Canal Company, by the operation of this act and the conveyance hereinafter authorized, shall be invested with all the rights, powers, franchises and privileges of the James River and Kanawha Company, in and to said Kanawha River; and upon such payment, the said Commonwealth shall release the mortgage given by the James River and Kanawha Company on the said Kanawha improvement, to secure the payment of the said bonds. Such release shall be executed by the Board of Public Works as soon as satisfactory evidence is submitted to them of the payment aforesaid.

TRANSFER OF WORKS BY JAMES RIVER AND KANAWHA COMPANY; PRECEDENT CONDITIONS.

6. When the board of public works shall be satisfied that the minimum capital, as provided in the next chapter, has been raised as therein required, and the said M. de Bellot des Minieres and his associates shall have deposited with the treasurer of the State of Virginia, in the manner prescribed by law, one million of dollars in the six per centum registered stock of the Commonwealth, and shall have deposited in one or more of the banks of the City of Richmond, to the credit of the president and directors of the James River and Kanawha Company, for the purpose of paying the floating debt of that company, the sum of four hundred thou-

sand dollars, to be applied to the payment of the said floating debt as far as necessary, and the balance, if any, to be returned to the said M. de Bellot des Minieres and his associates, and satisfactory evidence of the performance of said conditions shall have been furnished the board of public works, then the said James River and Kanawha Company shall, by proper deeds, convey its entire property, privileges and franchises of every kind to the said Virginia Canal Company, subject to the provisions and requirements of the fifth section of this chapter, and to the conditions hereafter required in this act, and also to any present subsisting contracts for the use of the water of the canal, or for any other purpose.

SUITS DEPENDING; HOW PROCEEDED WITH.

7. All causes and matters which shall be depending and undetermined in any court in this Commonwealth, in which the James River and Kanawha Company are or may be parties, plaintiff or defendant, on the day when the said transfer is made, shall be proceeded in, tried and determined as if the same had been commenced by or against the said Virginia Canal Company.

TRANSFER OF RIGHTS OF STATE OF VIRGINIA, AND RELEASE OF ITS SECURITIES; CONDITIONS.

8. When the board of public works shall be satisfied that the conditions prescribed in the sixth section have been fully complied with, and that the minimum capital, as provided for in the next chapter, shall have been raised as therein required, they shall transfer in like manner to the said Virginia Canal Company all the rights which the State of Virginia has as a stockholder in the James River and Kanawha Company; and shall furthermore release all mortgages, deeds of trust or other contracts, except the mortgage relative to the Kanawha River, by which any lien has been created to the Commonwealth upon the works and property of the said James River and Kanawha Company, subject only to the incumbrances, limitations and restrictions by this act imposed.

RIGHTS OF NEW COMPANY AFTER TRANSFER.

9. The company hereby incorporated thenceforward shall be entitled to all tolls, rents and other emoluments, rights, franchises, privileges and immunities which are now enjoyed by the said James River and Kanawha Company, subject to the provisions and limitations of the fifth section of this chapter; and the president and directors of the new company, their officers and agents, shall take possession of the property and works transferred as aforesaid, for the benefit of the Virginia Canal Company.

ANNUITY TO THE STATE.

10. The said Virginia Canal Company shall, in consideration of the transfer aforesaid, by the State of Virginia, pay into the treasury of the State, in the mode prescribed by law, semi-annually forever, the sum of sixty-seven thousand five hundred dollars. But the said company may at any time discharge itself from the said annuity by the payment into the said treasury of the sum of two millions two hundred and fifty thousand dollars in specie; but until the same shall be paid, the said annuity shall be forever a charge upon the whole property and franchises of the company; and the legislature may provide by law in what manner the payment of the said annuity shall be enforced.

SUM TO BE PAID TO OTHER STOCKHOLDERS.

11. The Virginia Canal Company shall furthermore take the said property so to be transferred to them, subject to the payment, to the corporate and individual stockholders mentioned in the second chapter, of five per centum per annum on the amounts of the certificates of stock held by each respectively, to be computed from the date of the organization of the said Virginia Canal Company, until the water line hereinafter mentioned shall be completed to the Ohio River, as herein prescribed; and thereafter, in lieu of the five per centum, shall pay to the said stockholders their ratable share of the profits of the company; and for failure to perform this provision, the company may be proceeded against as provided hereafter in the seventh chapter.

DEFENDANT'S EXHIBIT No. 7, 1863, C.

Acts of Assembly of Virginia, 1865-66.

The following is found on page 458 of said acts, pertaining to the Virginia Canal Company, etc.:

No. 19. Joint resolution in relation to an act entitled an act to amend and re-enact the act entitled an act to incorporate the Virginia Canal Company, etc., passed February 3, 1866.

Adopted February 9, 1866.

Whereas, this General Assembly at its present session, hath passed an act to amend and re-enact the act entitled an act to incorporate the Virginia Canal Company, and to transfer the rights and franchises of the James River and Kanawha Company thereto, passed March twenty-ninth, eighteen hundred and sixty-one, whereby it is provided that certain amounts shall be paid into the treasury of Virginia, in consideration of

the transfer of the State's interest in the James River and Kanawha Company, and as a security for the faithful performance of the provisions of the said act; therefore,

1. Be it resolved by the General Assembly of Virginia, That the amounts required by the said act to be paid to the State of Virginia shall be held by the State, in trust, subject to an adjustment of the debt of the State and a division of the public property between the States of Virginia and West Virginia, in case the two States shall not be reunited as one State; provided, West Virginia shall by law ratify the said act.

2. Resolved, That the General Assembly of West Virginia is hereby respectfully invited to pass a concurring statute, at its present session, giving its assent to the above-mentioned act.

DEFENDANT'S EXHIBIT No. 7, 1863, D.

JAMES RIVER AND KANAWHA COMPANY.

Chap. 139.—AN ACT to authorize the James River and Kanawha Company to make sale and transfer of all its works, property and franchises to the Richmond and Alleghany Railroad Company, and to define the powers and duties of the Board of Public Works in respect thereto.

Approved February 27, 1879.

Whereas, in the act incorporating the Richmond and Alleghany Railroad Company the Legislature authorized said company to purchase any of the property and franchises of any work of internal improvement within the limits of its charter, and the said company has made certain propositions to the James River and Kanawha Company, looking to the purchase of its property and franchises; therefore,

1. Be it enacted by the General Assembly of Virginia, That the James River and Kanawha Company is hereby authorized to sell and convey all its works, property and franchises to the Richmond and Alleghany Railroad Company, and that the proxies of the State of Virginia representing its stock in the James River and Kanawha Company are hereby authorized to vote for such sale and conveyance; provided, that the contract of sale and the conveyance aforesaid shall contain the following provisions and conditions, and shall not contain any conditions or provisions inconsistent therewith; provided, that before any contract shall be assented to by the State proxies, it shall be submitted to the Attorney-General of the State for his advice as to whether the terms of this act have been complied with:

First. The consideration to be paid and rendered by the Richmond and Alleghany Railroad Company, and the conditions of the sale and conveyance shall be the maintenance of the canal as a line of commerce,

subject, however, to the interruptions and abandonment contemplated by the ninth clause of this first section, and the construction and equipment of the railroad hereinafter described, which shall be a first-class railroad, with steel rails, the same gauge of the Chesapeake and Ohio Railway, and equipped with ample accommodation for all passenger travel and freight transportation, within the time hereinafter limited, and the performance of the duties prescribed by the sixth clause of this first section; and also the assumption and payment of all the debts and obligations of the said James River and Kanawha Company, which could be asserted against the James River and Kanawha Company, without meaning thereby to acknowledge or give in any manner any validity to any such debt or obligation, which it would not have if the same were asserted against the James River and Kanawha Company, and reserving to the Richmond and Alleghany Railroad Company the right to make any and all defenses in law or in fact, which the said James River and Kanawha Company would have the right to make if this contract had never been executed. A schedule of such debts and obligations, including the bond or bonds which may have been given, or which are to be given to the State of Virginia for the maintenance, clothing and guarding of the convicts, which shall be a preferred debt, shall be made part of the contract, and such bonds to the State of Virginia for the maintenance of convicts shall be a lien on all the property, rights and franchises transferred by the James River and Kanawha Company to the Richmond and Alleghany Railroad Company, subordinate only to the mortgages now existing on the same, and shall be the first and preferred lien upon all other property, rights and franchises of the Richmond and Alleghany Railroad Company now owned, or that may be hereafter acquired by it. The lien on the property, rights and franchises transferred, shall be reserved in the conveyance to be made, and a mortgage shall be executed by the Richmond and Alleghany Railroad Company on its property, rights and franchises existing, or to be acquired by it, to secure such debt to the State.

Second. A sum of money to be agreed upon, not less than thirty thousand dollars, nor more than fifty thousand dollars, shall be paid in cash by the Richmond and Alleghany Railroad Company to the James River and Kanawha Company, and said sum shall be expended and paid out by the president and directors of the James River and Kanawha Company in payment of salaries and wages due officers and employes up to the time of the transfer, which may be made as hereinafter provided, and in the payment of such debts, charges, costs and expenses as may have been incurred in the administration of the company since the first day of May, eighteen hundred and sixty-seven; and should such sum be insufficient to pay all of such claims, the said president and board of directors shall have full discretion and liberty in paying such as they may select. But if there should be a surplus remaining of said sum after discharging the claims hereinbefore described, such surplus shall be paid to the Richmond and Alleghany Railroad Company. But the bonds which

may have been given, or which are to be given, to the State of Virginia for the maintenance, clothing and guarding of convicts, and which said bonds are, by the terms of the contract with the State, to be payable five years after their date, shall not be included in the charges and expenses of administration payable under this clause, though fully included in the debts and obligations assumed by the Richmond and Alleghany Railroad Company.

Third. The Richmond and Alleghany Railroad Company being willing to make this contemplated purchase only on the condition that it can negotiate an equitable settlement with the creditors of the said James River and Kanawha Company, other than those specially paid under the second clause of this section, said company reserves the right, on failure in such negotiation, to give notice in writing to the president of the James River and Kanawha Company, or to its secretary, or to any officer found in charge of its principal office in Richmond, within sixty days from the passage of this act, of the failure of such negotiation, and of the consequent annulment of this contract. But if said notice is not given within said sixty days, the right to give the same shall cease, unless the time be extended by the board of directors of the James River and Kanawha Company, but such extension shall not exceed sixty days. But the Richmond and Alleghany Railroad Company shall never claim or demand from the State of Virginia, on account of the payment, purchase or compromise of the outstanding bonds of the James River and Kanawha Company, which were guaranteed, and afterwards assumed by the State of Virginia, a larger sum than that which said Richmond and Alleghany Railroad Company may expend in payment, purchase or compromise of said bonds. But the State shall not be liable for any bonds that the Supreme Court of Appeals have decided or may decide the State is not liable for.

Fourth. The Richmond and Alleghany Railroad Company shall deposit with the Board of Public Works the sum of five hundred thousand dollars, in market value, in United States bonds, or that amount, in market value, in other public securities, to be approved by said board, as a pledge for the completion of its railroad from Richmond up the valley of the James River, on the north side of said river from the city of Richmond to a point at or near the Joshua dam, on or near the present location of the tow-path, to Clifton Forge, with a branch of like gauge to Lexington from the mouth of North River, within twenty months from the date of such sale and conveyance. When the said board shall be satisfied that twenty-five miles of said railroad are fully completed, it shall surrender to said company fifty thousand dollars in value of said bonds; and for each successive section of twenty-five miles, which may be completed, an additional amount of fifty thousand dollars in value shall be surrendered; and on the completion of the whole work, the whole of the bonds remaining with said board shall be surrendered. But on failure of the Richmond and Alleghany Railroad Company to complete said railroad within the time prescribed as aforesaid, the said bonds, so to be deposited by it as security, shall be forfeited, and the same, or so many thereof as may remain with the Board of Public Works at the time of such forfeiture, shall be for-

feited and delivered by said board to the Commonwealth of Virginia. But if from any unforeseen casualties it should be found impracticable to complete the line within the time prescribed, the Board of Public Works shall have power to extend the time for a period not exceeding six months. The first one hundred and six miles of said railroad shall be constructed in ten months from the date of said contract and conveyance, and of said one hundred and six miles, fifty miles shall be below Lynchburg, and fifty-six miles above Lynchburg, and any railroad constructed between Buchanan and Clifton Forge shall be counted part of said fifty-six miles above Lynchburg. The surrender of bonds above provided for shall, so far as said one hundred and six miles are concerned, be limited so that no withdrawal for more than fifty miles shall be made of construction above Lynchburg, until at least fifty miles below Lynchburg are constructed. If the canal from Columbia, in Fluvanna County, to the first locks above Stillman's mills, on the Rivanna River, shall be discontinued at any time, said railroad company shall, within ninety days after said discontinuance, build a branch of their road along the line of said Rivanna River from Columbia to the locks aforesaid.

Fifth. After a final and absolute contract of sale shall have been concluded between the James River and Kanawha Company, and the Richmond and Alleghany Railroad Company, and within ten days after the James River and Kanawha Company shall have in writing notified the Richmond and Alleghany Railroad Company of its readiness to convey all its property and franchises in pursuance of such contract, the Richmond and Alleghany Railroad Company shall make the cash payment and deposit hereinbefore required on tender of such conveyance; and if such cash payment and deposit shall not then be made, the contract of purchase shall be and become absolutely null and void. But the said contract must be made within one hundred and twenty days after the passage of this act.

Sixth. It is hereby provided that the rate of dockage at Richmond shall not exceed the rate at present established by the James River and Kanawha Company, and all existing contracts for water privileges along the entire line shall be respected and maintained at rates not exceeding the present rates, except in those cases in which they may be cancelled or altered by agreement, or extinguished by condemnation. It shall be the duty of the Richmond and Alleghany Railroad Company to maintain the present water supply of the docks, and of the canal, along its line, between Bosher's dam and tidewater, and along the Lynchburg level between the water works' dam (which shall be preserved) above Lynchburg, and the first lock below Lynchburg, and in the construction of its railroad it shall not so destroy or obstruct the present canal between Bosher's dam and tidewater, or between the water works' dam above Lynchburg and the first lock below Lynchburg, as to lessen the present water supply.

Seventh. The maintenance of the canal by the Richmond and Alleghany Railroad Company, so far as required by the first and ninth clauses of this first section, and the construction and equipment by said company of the railroad hereinbefore described, within the time herein limited, and the performance by said company of the duties prescribed by the sixth

clause of this first section, shall be a sufficient compliance with all the conditions on which the franchises of the James River and Kanawha Company were heretofore granted to it by the State of Virginia: provided that nothing contained in this act shall release the Richmond and Alleghany Railroad Company from the obligation imposed on the James River and Kanawha Company by its charter to maintain farm bridges over any portion of the canal not filled up, and to keep open necessary ditches near the same; and when the canal is filled up, to permit the privilege of crossing where bridges formerly stood. A failure to build said railroad within two years from the date of the expiration of the time above prescribed for the completion of its works, shall work a forfeiture of said works, property and franchises, and also of the works, property and franchises of said railroad company to said James River and Kanawha Company; provided, however, that such forfeiture shall not prejudice the rights of any creditor of said railroad company, and upon such forfeiture, said James River and Kanawha Company shall thereupon be revived and restored as a corporation, with all of its rights, privileges and franchises, just as they existed at the date of the passage of this act. And the Board of Public Works are hereby authorized and required, whenever in their opinion such forfeiture shall have occurred, to take the proper steps in the Circuit Court of the City of Richmond, by such proceedings as to them shall seem best, to have said forfeiture established and declared, and the said Board of Public Works shall, upon the adjudication of such forfeiture, take possession of said works, property and franchises, and hold the same until the James River and Kanawha Company shall be reorganized, and thereupon turn the same over to said company, and the said Board of Public Works shall, without delay, cause said company to be reorganized in conformity with laws now in force in regard thereto. But nothing herein contained shall be construed as releasing the Richmond and Alleghany Railroad Company from any obligations now resting on the James keep the same in repair where the said canal crosses the streets of any River and Kanawha Company to erect bridges or make earth fillings, and city, if such obligation exists; provided, the city of Richmond shall not make any bridge or filling which shall obstruct or injure the power or right of said Richmond and Alleghany Railroad Company to furnish the water power of said canal to parties desiring to use the same, as required by the provisions of this act.

Eighth. The said railroad company may, in approaching and passing through Lynchburg, arrange for the temporary use of any tracks already constructed for a period not exceeding three years.

Ninth. The substitution of a railroad for the canal, as a line of commerce, shall be so managed as not to interrupt the business of the canal during the progress of railroad construction on such parts of the canal as are not necessarily occupied by the railroad company at the time of construction.

Tenth. All the property acquired or constructed by the Richmond and Alleghany Railroad Company, under this act or otherwise, shall be subject to taxation in the State of Virginia to the same extent and in like

manner as that of other railroads or canals which are subject to taxation, notwithstanding any provision to the contrary in the charter of the James River and Kanawha Company, or in the charter of any other company to whose rights, privileges, or franchises the James River and Kanawha Company has succeeded.

Eleventh. In any mortgage or deed of trust, which may hereafter be executed by said Richmond and Alleghany Railroad Company on its works and property, at least one of the trustees shall at all times be a resident of the State of Virginia.

Twelfth. The Richmond and Alleghany Railroad Company shall have no rights hereunder to build any dams in James River not already located; nor shall it have any right, after the completion of its railroad, to charge tolls upon the navigation of any part of said river, but may charge rents for the use of water derived from its works, as is now provided by law.

Thirteenth. The Richmond and Alleghany Railroad Company shall not charge for tolls on boats, passengers and freights upon the canal, so long as the same or any part thereof shall be operated by said railroad company, higher rates than the maximum rates charged by the James River and Kanawha Company since the fifteenth day of May, eighteen hundred and seventy-seven.

Fourteenth. When the railroad shall have been substituted for the canal as a line of commerce, as contemplated by this act, the Richmond and Alleghany Railroad Company shall pay to the owners of all boats then engaged in or fit for regular business operations on said canal, the fair cash value of such boats at that time; said value to be ascertained by commissioners, to be appointed on the motion of any boat owner, after ten days' notice to said Richmond and Alleghany Railroad Company, or on the motion of the said Richmond and Alleghany Railroad Company, by the Circuit Court of the city of Richmond, for the purpose of assessing and fixing such value. And upon the confirmation by said court of the report of said commissioners, the said railroad company shall pay into said court the aggregate amount of the values so ascertained; provided, the aggregate amount so required to be paid by said railroad company shall not exceed twenty-five thousand dollars. And in the distribution of said aggregate sum, if it be not sufficient to pay all the amounts so ascertained, the said court shall give a preference to the owners of such of said boats as shall have been engaged in or fit for regular business operations on said canal at the time of the execution of the contract herein contemplated; and the residue, if any, shall be by said court distributed to the owners of such of said boats as shall have been put in operation upon the canal subsequent to the execution of said contract, the distribution in each class to be pro rata. And upon the acceptance of said ascertained value, or of said distributive share, in every case the owners of the boat or boats thus, in whole or in part, compensated for, shall deliver the same to said railroad company, and thereupon the right of property in such boat or boats shall vest in said railroad company; but in every case in which said ascertained value, or said distributive share, shall not be accepted by boat owner, the said court shall refund to said Richmond and Alleghany

Railroad Company a corresponding sum of money out of the aggregate amount so to be paid into court as aforesaid.

Fifteenth. The said Richmond and Alleghany Railroad Company shall furnish to the people on the south side of the James River, for the transportation of persons and produce across James River to the line of their railroad, facilities the same, or at least equal to, those now afforded by the James River and Kanawha Company.

Sixteenth. The Richmond and Alleghany Company shall, within two years from the passage of this act, be required to provide all dams across James River from Richmond to the terminus of the line of the James River and Kanawha Canal with suitable sluices, slopes, or fish-ladders, so that fish may have free passage up or down said river during the month of March, April, May and June of each year, unless the water during said months be so low as not to run over such dams. Said sluices, slopes or fish-ladders shall be kept in good repair, and be restored in case of destruction, and be of such plan and construction as shall be approved by the fish commissioner of the State. Upon the completion, within the time specified of the said sluices, slopes or fish-ladders, the Richmond and Alleghany Railroad Company shall be released from any and all liabilities imposed by law upon the James River and Kanawha Company for failure to construct the same. With the approbation of said fish commissioner, the time herein specified may be extended to not exceeding twelve months.

2. Before the execution of the contract herein contemplated between the Richmond and Alleghany Railroad Company and the James River and Kanawha Company there shall be a satisfactory agreement and contract made between the Richmond and Alleghany Railroad Company and the Buchanan and Clifton Forge Railway Company, and said agreement and contract shall be made within one hundred and twenty days after the passage of this act.

3. Said Board of Public Works is further invested with full authority to institute all suits which may be necessary for the enforcement of said contract, and to defend all suits which may be brought against the said board in respect thereto.

4. The Circuit Court of the city of Richmond shall have exclusive jurisdiction of all suits in respect to said contract, whether brought by the Board of Public Works or by others, and the Board of Public Works shall be a necessary party to all such suits.

5. Upon the final conveyance of the property of the James River and Kanawha Company to the Richmond and Alleghany Railroad Company, herein contemplated, the contract between the State and the James River and Kanawha Company for the use of convict labor shall cease and determine, and the convicts then in the employ of the said company shall be returned to and delivered to the superintendent of the penitentiary.

6. The said Richmond and Alleghany Railroad Company shall be subject to the exercise of the police power of the city of Richmond, notwithstanding any rights claimed under the charter of the James River

and Kanawha Company, as though it were a corporation now for the first time chartered.

7. The said Richmond and Alleghany Railroad Company shall, as fast as they abandon the said canal, so drain the same as not to leave stagnant water, by which the health of the citizens along the line of said canal might be injuriously affected.

8. The General Assembly shall at all times have the right to so regulate the charges for local and way travel and freight over the route of said Richmond and Alleghany Railroad, as to prevent unjust discrimination against such local and way travel and freight.

9. This act shall be in force from its passage.

DEFENDANT'S EXHIBIT No. 7—1863—E.

JAMES RIVER AND KANAWHA COMPANY.

Chap. 128.—AN ACT to authorize the James River and Kanawha Company to make sale and transfer of all its works, property and franchises, and to invest the purchaser or purchasers with certain corporate rights, powers and franchises.

Approved April 2, 1879.

Whereas the General Assembly of Virginia has passed an act approved the twenty-seventh day of February, eighteen hundred and seventy-nine, entitled an act to authorize the James River and Kanawha Company to make sale and transfer of all its works, property and franchises to the Richmond and Alleghany Railroad Company, and to define the powers and duties of the Board of Public Works in respect thereto; and whereas it is desired to provide for the contingency, that the Richmond and Alleghany Railroad Company may not make the purchase of the works, property and franchises of the James River and Kanawha Company as contemplated in said act; now, therefore,

1. Be it enacted by the General Assembly, That in the event that the Richmond and Alleghany Railroad Company shall not purchase the works, property and franchises of the James River and Kanawha Company within the term prescribed by said act, then the James River and Kanawha Company is hereby authorized to sell and convey all of its works, property and franchises to any other corporation, person or persons, and the proxies of the State of Virginia, representing its stock in the James River and Kanawha Company, are hereby authorized to vote for such sale and conveyance: provided, that the contract of sale and conveyance shall contain all the provisions and conditions set forth and prescribed in the act aforesaid, approved the twenty-seventh day of February, eighteen hundred and seventy-nine, and shall not contain any provisions or conditions inconsistent therewith, except that any contract made under the provisions of this act by and with the James River and Kanawha

Company, or by and with the Buchanan and Clifton Forge Railway Company, may be made at any time after the failure of negotiations with the Richmond and Alleghany Railroad Company under the said act, approved February twenty-seventh, eighteen hundred and seventy-nine.

2. Any sale and conveyance made in pursuance of the provisions of this act shall pass to the purchaser all the works, property and franchises of the James River and Kanawha Company as they exist at the time of the sale, except so far as the same may be inconsistent with the contract of sale, and the purchaser shall henceforth be a corporation by any name which may be set forth in said conveyance, or in any writing signed by said purchaser and recorded in the court in which the conveyance shall be recorded. And the corporation thus created shall be liable to perform all the duties and obligations of the James River and Kanawha Company, except so far as the same may be inconsistent with the contract of sale. The interest of the purchaser in the corporation shall be personal estate, and he or his assigns may create so many shares of stock therein as he or they may think proper, not exceeding together the amount of stock held in the James River and Kanawha Company at the time of sale, and assign the same in a book to be kept for that purpose. The said shares shall thenceforth be on the footing of shares in joint stock companies generally, except only that the first meeting of the stockholders shall be held on such day and at such place as shall be fixed by the said purchaser, of which notice shall be published for two weeks in a newspaper published in the city of Richmond.

3. In addition to such rights, powers, privileges and franchises as are indicated by the preceding sections, the said purchaser shall be invested with all the corporate powers and franchises necessary for constructing, equipping, maintaining and operating the railroad contemplated in the act aforesaid, approved the twenty-seventh day of Ferbuary, eighteen hundred and seventy-nine, and by contract with the Buchanan and Clifton Forge Railway Company to acquire its rights, property and franchises.

4. It shall be lawful for the corporation thus created to borrow money to aid in the construction and equipment of its railroad, and for that purpose to mortgage its works, property and franchises.

5. This act shall be in force from its passage.

DEFENDANT'S EXHIBIT No. 7—1863—F.

JAMES RIVER AND KANAWHA COMPANY.

Chap. 181.—AN ACT authorizing the Board of Public Works to adjust the claims of the James River and Kanawha Company, and appropriating the proceeds, and providing for the safe-keeping of certain deposits, and authorizing the said James River and Kanawha Company to sell and convey its works and franchises to the Richmond and Alleghany Railroad Company.

Approved March 4, 1880.

1. Be it enacted by the General Assembly, That the Board of Public Works shall be authorized to adjust the claims of Virginia against the James River and Kanawha Company for the hire of convicts upon such terms as shall seem to them just and to the interest of the State: provided, however, that whatever sum of money shall be realized to the State for said settlement shall be paid into the treasury of the State for the use of the penitentiary.

2. The Board of Public Works shall have authority to select a depository for the safekeeping of five hundred thousand dollars of bonds, to be deposited by the purchaser of the works, property and franchises of the James River and Kanawha Company, and shall require the purchaser to pay the charges for such safekeeping.

3. That it shall be lawful for the James River and Kanawha Company to sell and convey, and for the proxies representing the State of Virginia in any stockholders' meeting of said company to vote for the sale and conveyance of its works, property and franchises to the Richmond and Alleghany Railroad Company, upon terms and conditions of an act approved February twenty-seventh, eighteenth hundred and seventy-nine, entitled an act, and so forth, notwithstanding the limitations of said act; provided, the said sale and conveyance shall be made within five days from the passage of this act.

4. This act shall be in force from its passage.

DEFENDANT'S EXHIBIT No. 7—1863—G.

This deed, made this fourth day of March, A. D. 1880, by and between the James River and Kanawha Company, a corporation under the laws of the State of Virginia, party of the first part, and the Richmond and Alleghany Railroad Company, also a corporation of the State of Virginia, party of the second part:

Whereas, the General Assembly of the State of Virginia heretofore passed an act approved February 27, 1879, entitled "An act to authorize the James River and Kanawha Company to make sale and transfer of all its works, property and franchises to the Richmond and Alleghany Railroad Company, and to define the powers and duties of the Board of Public Works in respect thereto," which act is in the words and figures following, to-wit:

"Whereas, in the act incorporating the Richmond and Alleghany Railroad Company the Legislature authorized said company to purchase any of the property and franchises of any work of internal improvement within the limits of its charter, and the said company has made certain propositions to the James River and Kanawha Company looking to the purchase of its property and franchises; therefore,

1. Be it enacted by the General Assembly of Virginia, That the James River and Kanawha Company is hereby authorized to sell and convey all its works, property and franchises to the Richmond and Alleghany Railroad Company, and that the proxies of the State of Virginia, repre-

senting its stock in the James River and Kanawha Company, are hereby authorized to vote for such sale and conveyance; provided, that the contract of sale and the conveyance aforesaid shall contain the following provisions and conditions, and shall not contain any conditions or provisions inconsistent therewith; provided, that before any contract shall be assented to by the State proxies, it shall be submitted to the Attorney-General of the State for his advice as to whether the terms of this act shall have been complied with.

First. The consideration to be paid and rendered by the Richmond and Alleghany Railroad Company and the conditions of the sale and conveyance shall be the maintenance of the canal as a line of commerce, subject, however, to the interruptions and abandonment contemplated by the ninth clause of the first section; and the construction and equipment of the railroad hereinafter described, which shall be a first-class railroad, with steel rails, the same gauge of the Chesapeake and Ohio Railway, and equipped with ample accommodations for all passenger travel and freight transportation, within the time hereinafter limited, and the performance of the duties prescribed by the sixth clause of this first section; and also the assumption and payment of all the debts and obligations of the said James River and Kanawha Company, which could be asserted against the James River and Kanawha Company, without meaning thereby to acknowledge or give in any manner any validity to any such debt or obligation which it would not have if the same were asserted against the James River and Kanawha Company, and reserving to the Richmond and Alleghany Railroad Company the right to make any and all defenses in law or in fact which the said James River and Kanawha Company would have the right to make if this contract had never been executed, a schedule of such debts and obligations, including the bond or bonds which may have been given or which are to be given to the State of Virginia for the maintenance, clothing and guarding of convicts, which shall be a preferred debt, shall be made part of the contract, and such bonds to the State of Virginia for the maintenance of convicts, shall be a lien on all the property, rights and franchises transferred by the James River and Kanawha Company to the Richmond and Alleghany Railroad Company, subordinate only to the mortgages now existing on the same, and shall be the first and preferred lien upon all other property, rights and franchises of the Richmond and Alleghany Railroad Company, now owned or that may be hereafter acquired by it. The lien on the property, rights and franchises transferred shall be reserved in the conveyance to be made, and a mortgage shall be executed by the Richmond and Alleghany Railroad Company on its property, rights and franchises, existing or to be acquired by it to secure such debt to the State.

Second. A sum of money to be agreed upon, not less than thirty thousand dollars nor more than fifty thousand dollars, shall be paid in cash by the Richmond and Alleghany Railroad Company to the James River and Kanawha Company, and said sum shall be expended and paid out by the president and directors of the James River and Kanawha Company in payment of salaries and wages due officers and employes up

to the time of the transfer, which may be made as hereinafter provided, and in the payment of such debts, charges, costs and expenses as may have been incurred in the administration of the company since the first day of May, eighteen hundred and sixty-seven; and should such sum be insufficient to pay all such claims, the said president and board of directors shall have full discretion and liberty in paying such as they may select. But if there should be a surplus remaining of said sum after discharging the claims hereinbefore described, such surplus shall be paid to the Richmond and Alleghany Railroad Company, but the bonds which may have been given, or which are to be given to the State of Virginia for the maintenance, clothing and guarding of convicts, and which said bonds are, by the terms of the contract with the State, to be payable five years after their date, shall not be included in the charges and expenses of administration payable under this clause, though fully included in the debts and obligations assumed by the Richmond and Alleghany Railroad Company.

Third. The Richmond and Alleghany Railroad Company being willing to make this contemplated purchase only on the condition that it can negotiate an equitable settlement with the creditors of the said James River and Kanawha Company, other than those specially paid under the second clause of this section, said company reserves the right, on failure in such negotiation, to give notice in writing to the president of the James River and Kanawha Company, or to its secretary, or to any officer found in charge of its principal office in Richmond, within sixty days from the passage of this act, of the failure of such negotiation and of the consequent annulment of this contract; but if said notice is not given within the said sixty days the right to give the same shall cease, unless the time be extended by the board of directors of the James River and Kanawha Company, but such extension shall not exceed sixty days; but the Richmond and Alleghany Railroad Company shall never claim or demand from the State of Virginia on account of the payment, purchase or compromise of the outstanding bonds of the James River and Kanawha Company which were guaranteed and afterwards assumed by the State of Virginia, a larger sum than that which said Richmond and Alleghany Railroad Company may expend in payment, purchase or compromise of said bonds. But the State shall not be liable for any bonds that the Supreme Court of Appeals have decided or may decide the State is not liable for.

Fourth. The Richmond and Alleghany Railroad Company shall deposit with the Board of Public Works the sum of five hundred thousand dollars, in market value in United States bonds or that amount in market value in other public securities, to be approved by said board, as a pledge for the completion of its railroad from Richmond, up the valley of the James River, on the north side of said river from the city of Richmond to a point at or near the Joshua dam, on or near the present location of the tow-path to Clifton Forge, with a branch of like gauge to Lexington from the mouth of North River, within twenty months from the date of such sale and conveyance. When the said board shall be satisfied that

twenty-five miles of said railroad are fully completed, it shall surrender to said company fifty thousand dollars in value of said bonds; and for each successive section of twenty-five miles which may be completed an additional amount of fifty thousand dollars in value shall be surrendered, and on the completion of the whole work the whole of the bonds remaining with said board shall be surrendered. But on the failure of the Richmond and Alleghany Railroad Company to complete said railroad within the time prescribed as aforesaid, the said bonds so to be deposited by it as security shall be forfeited, and the same or so many thereof as may remain with the Board of Public Works at the time of such forfeiture, shall be forfeited and delivered by said board to the Commonwealth of Virginia. But if from any unforeseen casualties it should be found impracticable to complete the line within the time prescribed, the Board of Public Works shall have power to extend the time for a period not exceeding six months. The first one hundred and six miles of said railroad shall be constructed in ten months from the date of said contract and conveyance, and of said one hundred and six miles fifty miles shall be below Lynchburg, and fifty-six miles above Lynchburg, and any railroad constructed between Buchanan and Clifton Forge shall be counted part of said fifty-six miles above Lynchburg. The surrender of bonds above provided for shall so far as said one hundred and six miles are concerned, be limited so that no withdrawal for more than fifty miles shall be made for construction above Lynchburg until at least fifty miles below Lynchburg are constructed. If the canal from Columbia in Fluvanna County, to the first locks above Stillman's mills on the Rivanna River, shall be discontinued at any time, said railroad company shall, within ninety days after said discontinuance, build a branch of their road along the line of said Rivanna River from Columbia to the locks aforesaid.

Fifth. After a final and absolute contract of sale shall have been concluded between the James River and Kanawha Company and the Richmond and Alleghany Railroad Company, and within ten days after the James River and Kanawha Company shall have in writing notified the Richmond and Alleghany Railroad Company of its readiness to convey all its property and franchises in pursuance of such contract, the Richmond and Alleghany Railroad Company shall make the cash payment and deposit hereinbefore required on tender of such conveyance; and if such cash payment and deposit shall not then be made, the contract of purchase shall be and become absolutely null and void; but the said contract must be made within one hundred and twenty days after the passage of this act.

Sixth. It is hereby provided that the rate of dockage at Richmond shall not exceed the rate at present established by the James River and Kanawha Company, and all existing contracts for water privileges along the entire line shall be respected and maintained at rates not exceeding the present rates, except in those cases in which they may be cancelled or altered by agreement or extinguished by condemnation. It shall be the duty of the Richmond and Alleghany Railroad Company to maintain the present water supply of the docks and of the canal along its line between

Bosher's dam and tidewater, and along the Lynchburg level between the water works' dam (which shall be preserved) above Lynchburg, and the first lock below Lynchburg, and in the construction of its railroad it shall not so destroy or obstruct the present canal between Bosher's dam and tidewater or between the water works dam above Lynchburg and the first lock below Lynchburg, as to lessen the present water supply.

Seventh. The maintenance of the canal by the Richmond and Alleghany Railroad Company so far as required by the first and ninth clauses of this first section, and the construction and equipment by said company of the railroad hereinbefore described, within the time herein limited, and the performance by said company of the duties prescribed by the sixth clause of this first section, shall be a sufficient compliance with all the conditions on which the franchises of the James River and Kanawha Company were heretofore granted to it by the State of Virginia, provided that nothing contained in this act shall release the Richmond and Alleghany Railroad Company from the obligation imposed on the James River and Kanawha Company by its charter to maintain farm bridges over any portion of the canal not filled up, and to keep open necessary ditches near the same; and where the canal is filled up to permit the privilege of crossing where bridges formerly stood. A failure to build said railroad within two years from the date of the expiration of the time above prescribed for the completion of its works, shall work a forfeiture of said works, property and franchises, and also of the works, property and franchises of said railroad company to said James River and Kanawha Company; provided, however, that such forfeiture shall not prejudice the rights of any creditor of said railroad company, and upon such forfeiture said James River and Kanawha Company shall thereupon be revived and restored as a corporation, with all of its rights, privileges and franchises, just as they existed at the date of the passage of this act.

And the Board of Public Works are hereby authorized and required, whenever in their opinion such forfeiture shall have occurred, to take the proper steps in the Circuit Court of the City of Richmond, by such proceedings as to them shall seem best, to have said forfeiture established and declared, and the said Board of Public Works shall upon the adjudication of such forfeiture take possession of said works, property and franchises, and hold the same until the James River and Kanawha Company shall be reorganized and thereupon turn the same over to said company and the said Board of Public Works shall without delay, cause said company to be reorganized in conformity with laws now in force in regard thereto.

But nothing herein contained shall be construed as releasing the Richmond and Alleghany Railroad Company from any obligation now resting on the James River and Kanawha Company to erect bridges or make earth fillings, and keep the same in repair where the said canal crosses the streets of any city, if such obligation exists, provided the city of Richmond shall not make any bridge or filling which shall obstruct or injure the power or right of said Richmond and Alleghany Company to furnish the water power of said canal to parties desiring to use the same as required by the provisions of this act.

Eighth. The said railroad company may, in approaching and passing through Lynchburg, arrange for the temporary use of any tracks already constructed, for a period not exceeding three years.

Ninth. The substitution of a railroad for a canal as a line of commerce, shall be so managed as not to interrupt the business of the canal during the progress of railroad construction on such parts of the canal as are not necessarily occupied by the railroad company at the time of construction.

Tenth. All the property acquired or constructed by the Richmond and Alleghany Railroad Company, under this act or otherwise, shall be subject to taxation in the State of Virginia, to the same extent and in like manner as that of other railroads or canals which are subject to taxation, notwithstanding any provision to the contrary in the charter of the James River and Kanawha Company, or in the charter of any other company to whose rights, privileges or franchises the James River and Kanawha Company has succeeded.

Eleventh. In any mortgage or deed of trust which may hereafter be executed by said Richmond and Alleghany Railroad Company on its works and property, at least one of the trustees shall at all times be a resident of the State of Virginia.

Twelfth. The Richmond and Alleghany Railroad Company shall have no rights hereunder to build any dams in James River not already located nor shall it have any right after the completion of its railroad to charge tolls upon the navigation of any part of said river, but may charge rents for the use of water derived from its works, as is now provided by law.

Thirteenth. The Richmond and Alleghany Railroad Company shall not charge for tolls on boats, passengers and freights upon the canal, so long as the same or any part thereof shall be operated by said railroad company, higher rates than the maximum rates charged by the James River and Kanawha Company, since the fifteenth day of May, eighteen hundred and seventy-seven.

Fourteenth. When the railroad shall have been substituted for the canal as a line of commerce as contemplated by this act, the Richmond and Alleghany Railroad Company shall pay to the owners of all boats then enagged in or fit for regular business operations on said canal the fair cash value of such boats at that time, said value to be ascertained by commissioners, to be appointed on the motion of any boat owner after ten days' notice to said Richmond and Alleghany Railroad Company, or on the motion of the said Richmond and Alleghany Railroad Company, by the Circuit Court of the city of Richmond, for the purpose of assessing and fixing such value; and upon the confirmation by said court of the report of said commissioners the said railroad company shall pay into said court the aggregate amount of the values so ascertained; provided the aggregate amount so required to be paid by said railroad company shall not exceed twenty-five thousand dollars. And in the distribution of said aggregate sum, if it be not sufficient to pay all the amounts so ascertained, the said court shall give a preference to the owners of such of said boats as shall have been engaged in or fit for regular business operations on said canal at the time of the execution of the contract herein contemplated and the

residue, if any, shall be by said court distributed to the owners of such of said boats as shall have been put in operation upon the canal subsequent to the execution of said contract, the distribution in each class to be pro rata. And upon the acceptance of said ascertained value or of said distributive share, in every case the owners of the boat or boats, thus in whole or in part compensated for, shall deliver the same to the said railroad company, and thereupon the right of property in such boat, or boats shall vest in said railroad company, but in every case in which said ascertained value or said distributive share shall not be accepted by boat owners, the said court shall refund to said Richmond and Alleghany Railroad Company a corresponding sum of money out of the aggregate amount so to be paid into court as aforesaid.

Fifteenth. The said Richmond and Alleghany Railroad Company shall furnish to the people on the south side of the James River for the transportation of persons and produce across James River to the line of their railroad facilities, the same or at least equal to those now afforded by the James River and Kanawha Company.

Sixteenth. The Richmond and Alleghany Railroad Company shall, within two years from the passage of this act, be required to provide all dams across James River from Richmond to the terminus of the line of the James River and Kanawha Canal with suitable sluices, slopes or fish ladders, so that fish may have free passage up or down said river the water during said months be so low as not to run over such dams. Said sluices, slopes or fish ladders shall be kept in good repair, and be restored in case of destruction, and be of such plan and construction as shall be approved by the fish commissioner of the State. Upon the completion within the time specified, of the said sluices, slopes or fish ladders, the Richmond and Alleghany Railroad Company shall be released from any and all liabilities imposed by law upon the James River and Kanawha Company for failure to construct the same. With the approbation of said fish commissioner, the time herein specified may be extended to not exceeding twelve months.

2. Before the execution of the contract herein contemplated between the Richmond and Alleghany Railroad Company and the James River and Kanawha Company, there shall be a satisfactory agreement and contract made between the Richmond and Alleghany Railroad Company and the Buchanan and Clifton Forge Railway Company and said agreement and contract shall be made within one hundred and twenty days after the passage of this act.

3. The Board of Public Works is further invested with full authority to institute all suits which may be necessary for the enforcement of said contract and to defend all suits which may be brought against the said board in respect thereto.

4. The Circuit Court of the City of Richmond shall have exclusive jurisdiction of all suits in respect to said contract, whether brought by the Board of Public Works or by others, and the Board of Public Works shall be a necessary party to all such suits.

5. Upon the final conveyance of the property of the James River and

Kanawha Company to the Richmond and Alleghany Railroad Company herein contemplated, the contract between the State and the James River and Kanawha Company for the use of convict labor shall cease and determine, and the convicts then in the employ of the said company shall be returned to and delivered to the superintendent of the penitentiary.

6. The said Richmond and Alleghany Railroad Company shall be subject to the exercise of the police power of the city of Richmond, notwithstanding any rights claimed under the charter of the James River and Kanawha Company, as though it were a corporation now for the first time chartered.

7. The said Richmond and Alleghany Railroad Company shall, as fast as they abandon the said canal, so drain the same as not to leave stagnant water, by which the health of the citizens along the line of said canal might be injuriously affected.

8. The General Assembly shall at all times have the right to so regulate the charges for local and way travel and freight over the route of said Richmond and Alleghany Railroad as to prevent unjust discrimination against such local and way travel and freight.

9. This act shall be in force from its passage.

And whereas, the said General Assembly passed another act approved the fourth day of March, A. D., 1880, entitled "An act defining the conditions of conveyance and recordation under any sale the James River and Kanawha Company may make of its works and franchises," Which act is in the words and figures, following, to-wit:

1. Be it enacted by the General Assembly of Virginia, That in any contract the James River and Kanawha Company may make for the sale of its works and franchises it may consent, with the approval of the Board of Public Works, that iron rails may be temporarily laid instead of steel rails, and that twelve months additional time for construction may be given for all sections to be laid with steel rails made in Virginia.

2. Any purchaser of such works and franchises may sell the same to the Richmond and Alleghany Railroad Company, or to any other corporation authorized by law to purchase.

3. The tax upon the recordation of the deed conveying said works and franchises, shall be one thousand two hundred and fifty dollars, and if the purchaser shall immediately convey the same to a corporation no additional tax shall be required for recordation.

4. This act shall be in force from its passage.

And whereas, the said General Assembly also passed another act approved the fourth day of March, A. D., 1880, entitled, "An Act authorizing the James River and Kanawha Company to sell and convey its works and franchises to the Richmond and Alleghany Railroad Company," which act is in the words and figures following, to-wit:

1. Be it enacted by the General Assembly, That it shall be lawful for the James River and Kanawha Company to sell and convey, and for the

proxies representing the State of Virginia, in any stockholders meeting of said company to vote for the sale and conveyance of its works, property and franchises to the Richmond and Alleghany Railroad Company, upon terms and conditions of an act approved February twenty-seventh, eighteen hundred and seventy-nine, entitled an act, and so forth, notwithstanding the limitations of said act, provided the said sale and conveyance shall be made within five days from the passage of this act.

2. This act shall be in force from its passage.

And whereas, the party of the second part has contracted to make such purchase under the provisions and authority of the said acts aforesaid, and on the terms, conditions, provisions and limitations therein set forth;

And whereas, the party hereto of the second part has paid to the party hereto of the first part, the sum of thirty thousand dollars in cash, required to be paid by the second clause of the first section of the act recited;

And whereas, the party hereto of the second part has deposited with the Board of Public Works the sum of five hundred thousand dollars in market value in United States bonds as required by the fourth clause of the first section of the act hereinbefore recited:

And whereas before the execution of this conveyance a satisfactory agreement and contract has been made between the party of the second part and the Buchanan and Clifton Forge Railway Company, and the sum of four thousand dollars as required by said contract has been paid by the party hereto of the second part to the said Buchanan and Clifton Forge Railway Company. Now this deed, Witnesseth, that for and in consideration of the premises and in pursuance of the Acts of Assembly aforesaid, and in consideration thereof, and of the terms, conditions, provisions and limitations therein contained, the James River and Kanawha Company doth hereby grant and convey unto the said the Richmond and Alleghany Railroad Company, all the works, property and franchises of the said James River and Kanawha Company, including all the lands, buildings, canals, basins, tow-paths, embankments, bridges, dams, locks, turnpikes, estates and interests in turnpikes, roads, toll houses, docks, wharves, ferries, ferry houses, ferry boats, the North River and Rivanna improvements, canal boats, materials, tools, machinery, horses, mules, dredging machines, and all the rights, water power, water rights, privileges and franchises of the said James River and Kanawha Company, and all its other property, real, personal or mixed, belonging or appertaining to the said canals, wharves and docks, or connected with the proper equipment, operation or conduct thereof; and all tolls, income issues and profits to be had or derived from the property, works, rights, privileges and franchises hereby conveyed or any of them and all right to receive or recover the same, to have and to hold the property, works, rights, privileges and franchises hereby conveyed, with all and singular the said appurtenances, tolls, rents, issues and profits unto the said party hereto of the second part, its successors and asign forever.

Each of the partie to this deed hereby binds itself, its successors and

assigns to the full and faithful performance and fulfillment on its part of all the requirements imposed on said parties respectively by the acts hereinbefore recited. A schedule of the debts and obligations of the James River and Kanawha Company which is required by the first clause of the first section of the act first herein recited, is hereto appended, and is made a part of this deed.

The party of the first part doth warrant generally the property hereby conveyed.

In testimony whereof, the parties hereto have caused their respective corporate seals to be hereto affixed, and these presents to be signed by their respective presidents, the day and year first herein written.

(Seal) THE JAMES RIVER AND KANAWHA COMPANY,

By JNO W. JOHNSTON, President.

(Seal) THE RICHMOND AND ALLEGHANY RAILROAD CO.,

By GEO. M. BARTHOLOMEW, President.

Attorney General's Office,
Richmond, March 4th, 1880.

The foregoing contract of sale and conveyance between the James River and Kanawha Company and the Richmond and Alleghany Railroad Company, has been submitted to me, and upon an examination of said proposed contract, I find that the acts of the General Assembly under which it is made are inserted into the contract and made a part thereof, and that said contract is in all respects in compliance with the terms of said acts.

Given under my hand this day and year above written.

JAS. G. FIELD, Attorney General.

State of Virginia,
City of Richmond, to-wit:

I, Solomon Cutchings, a notary public in and for the city aforesaid, in the State of Virginia, do certify that John W. Johnston, president, and George M. Bartholomew, president, whose names are signed to the writing above bearing date on the 4th day of March, 1880, having severally acknowledged the same before me in my city aforesaid.

(Seal) Given under my hand this 4th day of March, 1880.

SOLOMON CUTCHINS, N. P

SCHEDULE

Of the debts and obligations of the James River and Kanawha Company appended to the foregoing deed, and to be taken as a part thereof.

1st. Old floating debt, all due prior to May, 1867, with interest calculated to March 1st, 1879:

(a) Bonds of the North River Navigation Company	$ 1,000 00
Interest on same to 1st March, 1879	1,400 00
(b) Bills payable	3,643 00
Interest on same to 1st March, 1879	5,263 65
(c) Pay rolls and open accounts	3,500 00
Interest on same to 1st March, 1879	2,897 50
(d) Hire of hands, not on pay rolls	2,900 00
Interest on same to 1st March, 1879	2,718 50
Total of this class	$23,322 65

No claim has been made on the company for any of the above debts so far as known by the present officers of the company, since the year 1867, year 1867, or for some time before that date.

2nd. Balance of 8 per cent bonds issued in 1856:

Principal	$12,500 00
Interest on same to 1st March, 1880	3,043 66
Total of this class	$15,543 66

3rd. First mortgage bonds, dated May, 1867:

Principal	$750,000 00	
Unpaid coupons, up to and including Nov., 1879 (approx.)	125,736 00	
		$875,736 00

Second mortgage bonds, dated Nov. 9th, 1870:

Principal	$227,400	
Unpaid coupons, up to and including Nov., 1879 (approximate)	35,450 00	
		$262,850 00

Third mortgage bonds, dated Sept. 1st, 1877:

Principal (all held by Buchanan and Clifton Forge R. W. Co.)	$248,000 00	
Unpaid coupons, up to and including March, 1880	7,440 00	
		255,440 00
Total of the three mortgage debts		$1,394,026 00

4th. Thirty thousand dollars of the second mortgage bonds of the company have been pledged to the State of Virginia, as security for the return of the convicts, and as security for the payment of the penalty for the escape of convicts.

Ten thousand dollars of the second mortgage bonds are pledged as collateral for the debt of $5,000 to the supervisors of the County of Rockbridge, mentioned in the 7th class of this schedule, three thousand dollars of second mortgage bonds, belonging to Jordan Ballard & Co., contractors, are retained by this company as security for their compliance with their contract for the return of convicts hired to them by the company, and for compliance with the other provisions of said contract in reference to said convicts.

5th. The Guaranteed Debt.—This debt consists of bonds of the company guaranteed by the State of Virginia, under the provisions of the Act of Assembly of March, 1860, the payment of these debts was assumed by the State, in consideration of the issue to the State of preferred stock of the company:

Principal of bonds outstanding	$122,580 00
Interest matured to 1st Jan., 1880, per statement of auditor of State of Virginia	93,576 78
Total of this class	$216,156 78

6th. Debt to the State of Virginia for maintenance of convicts:

Bond December 15, 1878, at 5 years, bearing interest from date	$47,729 46
Bond December 15, 1879, at 5 years, bearing interest from date	33,877 94
Amount since accrued, estimated	5,800 00
Total of this class	$87,407 40

7th. (a) Bond to the city of Lynchburg for loan secured by pledge of water rents on the Lynchburg level ..... $ 35,000 00

On 30th September, 1879, it was claimed by the city of Lynchburg that a balance of $796.53 of interest on this bond was due, but the account is unsettled.

(b) Bond to the County of Rockbridge for loan, subject to written contract under which the company claims that this debt is payable only and solely from the net revenues of the North River Canal, which claim is disputed by the county	50,000 00
Interest to date, approximate	37,000 00
Total of this class	$122,000 00

A contract has been entered into between the James River and Kanawha Company and the Board of Supervisors of the County of Rockbridge by which the debt above stated of $50,000 and its interest is released, subject to the condition that a railroad is completed to the town of Lexington, as set forth in said contract.

8th. Salaries and wages of officers and employees, and debts, charges, costs, and expenses incurred in the administration of the company since 1st May, 1867, other than those included in the foregoing clauses:

(a) Pay rolls and salaries (estimated)	$ 8,500 00
(b) Outstanding due bills for first mortgage bonds	1,205 00
Interest on same to 1st March, 1880	517 30
(c) Supervisor of Rockbridge County, ten bonds of $500 each for a loan	5,000 00
Interest on same to March 1st, 1880	450 00
(d) Open account for supplies, counsel fees, printing, &c. (estimated)	14,000 00
Total of this class	$29,672 30

9th. The company claims the right to add any debt omitted by inadvertence, and to correct any inaccuracy in this schedule inadvertently made.

10th. Among the debts of the James River and Kanawha Company, provided for by the 9th section of foregoing schedule of debts, omitted by inadvertence, are to be included compensation for boats designed for use on the canal, the construction of which has been commenced or completed, in pursuance of resolutions approved by the stockholders of the James River and Kanawha Company, in general meeting on the 1st day of July, 1879, such compensation to be equivalent to the equitable value of all such boats as have been so commenced or completed, under the express written sanction of the president of the said James River and Kanawha Company, prior to the conveyance from the James River and Kanawha Company to the Richmond and Alleghany Railroad Company.

City of Richmond, to-wit:

In the office of the Court of Chancery for the said city, the 5th day of March, 1880.

This deed was presented, and with the certificates and schedule annexed, admitted to record at half past five o'clock P. M.

Teste:

BENJ. H. BERRY, Clerk.

A Copy—Teste:

CHARLES O. SCOVILLE, Clerk.

DEFENDANT'S EXHIBIT No. 8—1863.

Page No. 48.

Class G.

Hillman Exhibit 8.
Defendant Exhibit 8.
(Corresponds with Exhibit 8, Jan. 1, 1861.)

CLASS G—1863.

STATE OF WEST VIRGINIA.

Manassas Gap Railroad Company.

Total cost of Road, Equipment, etc., according to Board of Public Works' Report, Document 17, Folio 218, was in 1860. $3,322,164 67

Stock paid up to that date was $ [illegible]8,312 97

The Road was not operated at that time (June 20, 1863), and no other value than the above is obtainable. In 1869 the State gave its stock in this Road to the Orange & Alexandria Road, forming the Orange, Alexandria & Manassas Railroad, condition being that share of new stock should be issued to all outside holders of old.

Folio 184, Ledger "B," Internal Improvement Fund shows that on June 20, 1863, the State of Virginia held stock of this road to the value of $2,280,000.00.

DEFENDANT'S EXHIBIT No. 9—1863.

Class G.
(excepting Assets No. 51-52.)

Page No. 49.
Hillman Exhibit 9.
Defendant 9.
(Corresponds with Exhibit 9, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement of Stocks in and Claims against Internal Improvement Companies held by the Commonwealth on August 22, 1914.

Asset No.	Name of Co.	How disposed of.	Par value or cost to June 20, 1863.	Par June 20, 1863, of securities not yet disposed of.	By what authority disposed of.	Ledger value of undisposed securities on Aug. 22, 1914.
3.	Roanoke Valley R. R.	Given away	$ 177,402 00		Act of Genl. Assembly, Feb. 18, 1866—Pages 333-334.	
	Roanoke Valley R. R.	Given away	*130,000 00			
4.	Fredericksburg & Gordonsville R. R.	On hand	163,299 00	$163,299 00	B. P. W. Ledger "B," page 181	$ 163,299 00
5.	Richmond & York River R. R.	Sold	290,999 52	179,500 00	B. P. W. Ledger "B," page 192	179,500 00
	Richmond & York River R. R.	Sold	*200,000 00		Decree of Ch. Ct. Dec. 16/72 Decree of Ch. Ct. Dec. 16/72	
6.	Rappahannock Co	On hand	179,500 00	179,500 00	B. P. W. Ledger "B," page 192	179,500 00
7.	Rivanna River Navigation Co.	On hand	269,133 14	269,133 14	B. P. W. Ledger "B," page 193	269,133 14
8.	Smith's River Navigation Co.	Abandoned	4,083 12		Journal "D," B. P. W. page 176	

DEFENDANT'S EXHIBIT No. 9—1863.
(Continued)

9. Slate River Co.	Abandoned	21,000 00		Journal "D," B. P. W., page 176	
10. Kempsville Canal Co.	On hand	13,650 00	13,650 00	B. P. W. Ledger "B," page 193	13,650 00
11. Hazel River Navigation Co.	On hand	63,079 58	63,079 58	B. P. W. Ledger "B," page 192	63,079 58
12. Goose Creek & Little River Navigation Co.	On hand	58,255 35	58,255 35	B. P. W. Ledger "B," page 191	58,255 35
13. Dragon Swamp Navigation Co.	Abandoned	1,464 00		B. P. W. Journal "D," page 176	
14. Chesapeake & Ohio Canal Co.	On hand	250,000 00	250,000 00	B. P. W. Journal "D," page 176	250,000 00
Potomac Co.	On hand	31,111 11	31,111 11	B. P. W. Ledger "B," page 191	31,111 11
		$1,852,976 82	$1,028,028 18		$1,028,028 18

Note.—None of the securities representing the total of $1,028,028.18 have been inspected by us.
*Preferred stock.

DEFENDANT'S EXHIBIT No. 10—1863.

Page No. 50.

STATE OF WEST VIRGINIA.

Defendant Exhibit 10.
Hillman Exhibit 10.
(Corresponds with Exhibit 10, January 1, 1861.)

Amount of taxes, fines, etc., paid by West Virginia Counties to the State of Virginia after June 20, 1863.

	PERIOD June 20, 1863, to April 1, 1865.
General taxes assessed after Jan. 1, 1861	$ 189,642 31
Law processes assessed after Jan. 1, 1861	936 19
Law processess assessed prior to Jan. 1, 1861	1,158 13
General taxes assessed prior to Jan. 1, 1861	22,715 93
License taxes of May, 1861	1,231 33
Lands redeemed	552 49
Delinquent taxes	351 95
Delinquent and forfeited lands	8,210 30
	$ 224,799 63

Note: The amount of taxes, period after June 20, 1863, was entered as $225,078.06 in Supplemental Answer.

*DEFENDANT'S EXHIBIT No. 11—1863.

Page No. 51.

STATE OF WEST VIRGINIA.

Summary of Claims of West Virginia for Consideration in Settlement of Debt as set up by Hillman Exhibits.

June 20, 1863.

(Corresponds with similar report for Jan. 1, 1861.)

Class A—Exhibit 1	$ 2,459,216 29	
Class B—Exhibit 2	507,744 00	
Class C—Exhibit 3	13,787,316 86	
Class D—Exhibit 4	1,381,793 65	
Class E—Exhibit 5	4,060,487 82	
Class F—Exhibit 6	4,566,015 61	
Class G—Exhibit 7	5,410,429 54	
Class G—Exhibit 8	2,280,000 00	
Class G—Exhibit 9		
23.5% being West Virginia's proportion of	$34,453,003 77	$ 8,096,455 89
West Va. paid in taxes assessed after Jan. 1, 1861		224,799 63
Total Claim		$ 8,321,255 52

*Correction of next following page, which is superseded by this exhibit.

DEFENDANT'S EXHIBIT No. 11—1863.

Page 51.

STATE OF WEST VIRGINIA.

Summary of claims of West Virginia for consideration in settlement of debt as set up by Hillman Exhibits, June 20, 1868.

(Corresponds with similar report for Jan. 1, 1861.)

	Value as Shown By West Virginia.	
Class A—Exhibit 1	$ 2,459,216 29	
Class B—Exhibit 2	507,744 00	
Class C—Exhibit 3-A	13,787,316 86	
Class D—Exhibit 4-B	1,357,480 66	
Class E—Exhibit 5	4,060,487 82	
Class F—Exhibit 6	*4,566,015 61	
Class G—Exhibit 7	5,410,429 54	
Class G—Exhibit 8		
Class G—Exhibit 9		
23.5%—West Virginia's proportion	$31,348,690 78	$ 7,366,942 33
West Virginia paid in taxes assessed after Jan. 1, 1861		224,799 63
Total claim		$7,591,741 96

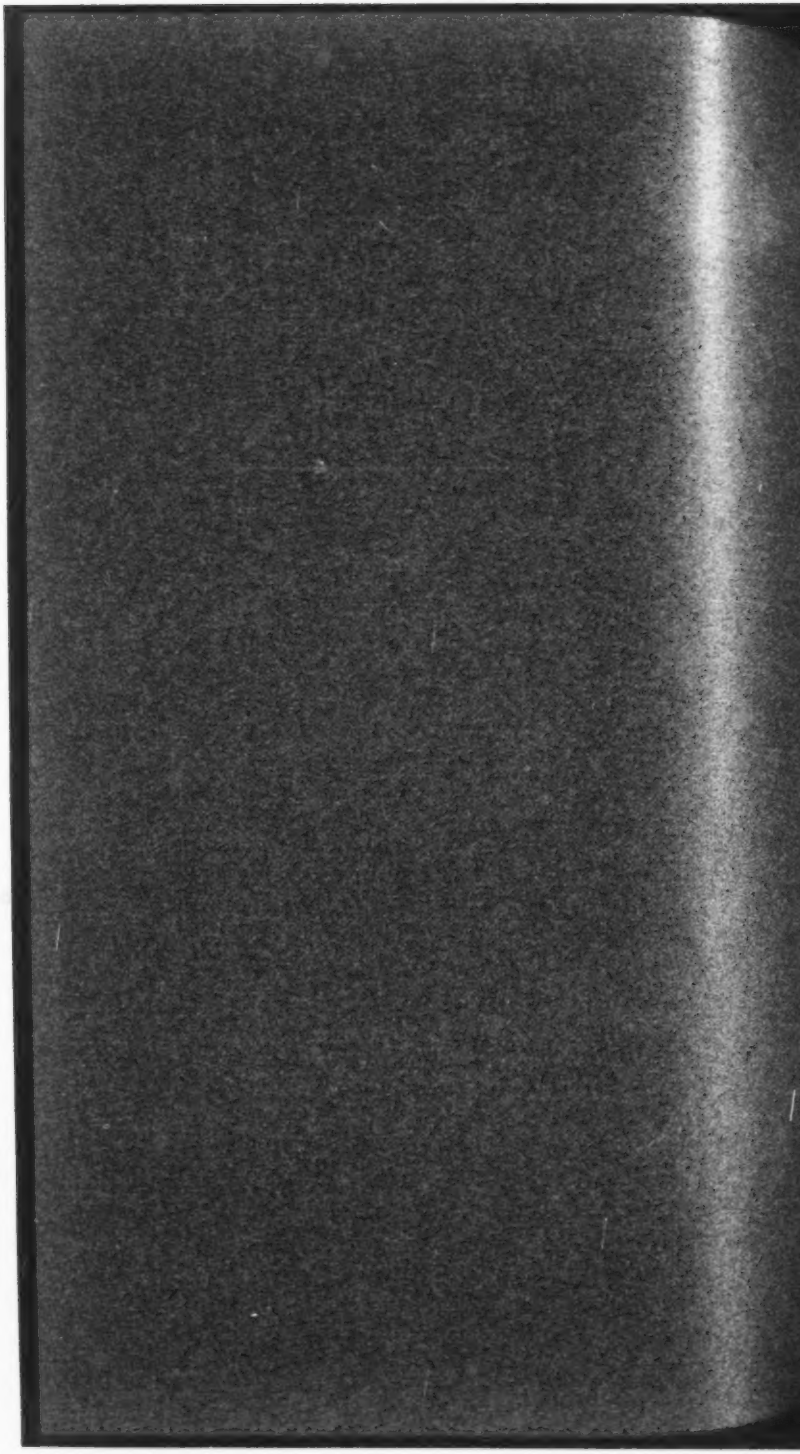
*Only partial—indeterminate left out.

Defendant's Exhibits

(Miscellaneous)

1861-1863.

Schedules
Compiled and Prepared by
THE MUTUAL AUDIT CO.
LOUISVILLE, KY.



DEFENDANT'S EXHIBIT No. 12—1863—4 Sheets.

Sheet 1.

Hillman Exhibit 12.
Defendant Exhibit 12.
(Corresponds with Exhibit 12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to June 20, 1863.

Name of Stock.		Date Paid.	Amount	Reference.				On Account Of.
O. & A. R. R. Co.	Stock	Sept. 8, 1864	$ 34,912 00	Folio 157	Jou'l D Int. Im'pt Fund		4% Div. on	$ 872,802 83
Rich. & Dan. R. R. Co.	"	Sept. 9, 1863	71,315 91	" 148	" "		6% " "	1,188,598 50
" " "	"	Mar. 26, 1864	59,429 92	" 157	" "		5% " "	1,188,598 50
Rich & Pet. R. R Co.	"	*July 31, 1863	1,278 20	" 148	" "		6% " "	385,600 00
" " "	"	Nov. 3, 1863	38,560 00	" 157	" "		10% " "	385,600 00
" " "	"	Jan. 15, 1884	15,424 00	" 157	" "		4% " "	385,600 00
" " "	"	Sept. 20, 1864	38,560 00	" 157	" "		10% " "	385,600 00
Va. Cen. R. R. Co.	"	Sept. 19, 1864	60,419 62	" 157	" "		3% " "	2,013,987 52
" " "	"	Nov. 3, 1863	80,559 50	" 157	" "		4% " "	2,013,987 52
" " "	"	Sept. 19, 1864	60,419 62	" 157	" "		3% " "	2,013,987 52
Rh. & York River Co.	"	Aug. 15, 1863	29,459 97	" 148	" "		8% " "	490,999 52
" " "	"	Jan. 28, 1864	24,549 97	" 157	" "		5% " "	490,999 52
Va. & Tenn. R. R. Co	"	Mar. 26, 1864	100,000 00	" 157	" "		6% " "	2,300,000 00
" " "	"	Apl. 1, 1864	38,000 00	" 157	" "		6% " "	(Part payment) 2,300,000 00 (Balance.)
Nor. & Pet. R. R. Co.	"	**Sept. 7, 1863	150 48	" 149	" "		3% " "	82,500 00
" " "	"	Mar. 23, 1864	2,475 00	" 158	" "		3% " "	82,500 00
" " "	"	Feb. 22, 1865	4,950 00	" 166	" "		6% " "	82,500 00

DEFENDANT'S EXHIBIT No. 12—1863—4 Sheets.

Sheet 1.—(*Continued*)

Roano..	Nav.	Co.	"	Apr.	30,	1868	320	00	Treas.'s Blot.	this date	4/10% " " 80,000 00
"	"	"		Mar.	5,	1869	480	00	"	"	6/10% " " 80,000 00
"	"	"		Nov	1,	1871	400	00	"	"	1/2 % " " 80,000 00
"	"	"		Dec.	13,	1872	400	00	"	"	1/2 % " " 80,000 00
"	"	"		Sept	10,	1874	400	00	"	"	1/2 % " " 80,000 00
Upper	Appomat.	Co.	"	Apl.	19,	1867	625	00	"	"	5% " " 12,500 00
"	"	"	"	Aug.	17,	1867	500	00	"	"	4% " " "
"	"	"	"	Nov.	29,	1867	500	00	"	"	4% " " "
"	"	"	"	Feb	22,	1868	375	00	"	"	3% " " "
"	"	"	"	May	27,	1868	375	00	"	"	3% " " "
"	"	"	"	Sept.	1,	1868	312	50	"	"	2½ % " " "
"	"	"	"	Nov.	25,	1868	312	50	"	"	2½ % " " "
"	"	"	"	Mch.	3,	1869	375	00	"	"	3% " " "
"	"	"	"	June	2,	1869	375	00	"	"	3% " " "
"	"	"	"	Dec.	3,	1869	375	00	"	"	3% " " "
"	"	"	"	Mch.	29,	1870	375	00	"	"	3% " " "
"	"	"	"	July	1,	1870	312	50	"	"	2½ % " " "
"	"	"	"	May	18,	1871	375	00	"	"	3% " " "
"	"	"	"	Aug.	2,	1871	375	00	"	"	3% " " "
"	"	"	"	Mch.	7,	1872	375	00	"	"	1– 3% " " "
"	"	"	"	Apl.	8,	1872	212	50	"	"	1-1/10% " " "

*Total payment $23,136.00—balance already claimed.
**Total payment $2,475.00—balance already claimed

Sheet 2.

DEFENDANT'S EXHIBIT No. 12—1863—4 Sheets.

Hillman Exhibit 12.
Defendant Exhibit 12.
(Corresponds with Exhibit 12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to June 20, 1863.

Name of Stock.				Date Paid.	Amount.	Reference.	On Account of
Farmers Bank of Va.			Stock	Dec. 19, 1863	$26,415 00	Folio 156 Jour. D Int. Imp. Fund	7½ % Div. on 3522 shares
"	"	"	"	June 24, 1864	14,088 00	Folio 157 Jour. D Int. Imp. Fund	4 % Div. on 3522 shares
"	"	"	"	Dec. 20, 1864	28,176 00	Folio 166 Jour. D Int. Imp. Fund	8 % Div. on 3522 shares
"	"	"	"	‡Dec. 1, 1863	33,942 57	Treasurer's B. this date	7½ % Div. on 5050 shares
"	"	"	"	*June 1, 1864	20,200 00	" "	4 % Div. on 5050 shares
"	"	"	"	Dec. 1, 1864	40,400 00	" "	8 % Div. on 5050 shares
"	"	"	"	*June 1, 1863	7,075 27	" "	7½ % Div. on 1054 shares
"	"	"	"	June 1, 1864	4,216 00	" "	4 % Div. on 1054 shares
"	"	"	"	Dec. 1, 1864	8,432 00	" "	8 % Div. on 1054 shares
Bank of Virginia			"	Dec. 29, 1863	44,073 75	Folio 156 Jour. D Int. Imp. Fund	7½ % Div. on 8395 shares
"	"		"	June 1, 1864	23,506 00	Folio 157 Jour. D Int. Imp. Fund	4 % Div. on 8395 shares
"	"		"	Dec. 1, 1864	47,012 00	Folio 166 Jour. D Int. Imp. Fund	8 % Div. on 8395 shares
"	"		"	June 25, 1863	11,375 00	Treasurer's B. this date	5 % Div. on 3250 shares
"	"		"	Dec. 29, 1863	17,062 50	" "	7½ % Div. on 3250 shares
"	"		"	June 29, 1864	9,100 00	" "	4 % Div. on 3250 shares
				Dec. 29, 1864	18,200 00	" "	8 % Div. on 3250 shares

DEFENDANT'S EXHIBIT No. 12—1863—4 Sheets.

Sheet 2. (*Continued*)

"	"	"	†Dec.	29, 1863	9,966 37			"	"	7½ % Div. on 2121 shares
"	"	"	June	29, 1864	5,938 80			"	"	4 % Div. on 2121 shares
"	"	"	Dec.	29, 1864	11,877 60			"	"	8 % Div. on 2121 shares
Bank of the Valley		"	Mar.	25, 1864	4,188 00	Folio 157	Jour. D Int. Imp. Fund			4 % Div. on 1047 shares
"	"	"	Mar.	25, 1864	14,800 00		Treasurer's B. this date			4 % Div. on 1047 shares
"	"	"	Mar.	25, 1864	368 00		" "			4 % Div. on 1047 shares
Exchange Bank		"	Jan.	13, 1864	2,136 00	Folio 156	Jour. D Int. Imp. Fund			8 % Div. on 268 shares
"	"	"	Jan.	13, 1865	2,136 00	Folio 166	Jour. D Int. Imp. Fund			8 % Div. on 267 shares
"	"	"	§Jan.	13, 1864	60,853 86		Treasurer's B. this date			8 % Div. on 8488 shares
"	"	"	July	2, 1864	35,020 00		" "			4½ % Div. on 8488 shares
"	"	"	Jan.	13, 1865	67,904 00		" "			8 % Div. on 8488 shares
Grazier's Bank, formerly branch N. W. Bank at Jeffersonville		"	July	28, 1863	6,820 00		" "			5 % Div. on 1346 shares
"	"	"	Feb.	1, 1864	6,820 00		" "			5 % Div. on 1346 shares
Richmond, Fredericksburg & Potomac R. R. Co.		"	Dec.	30, 1863	50,912 00	Folio 157	Jour. D Int. Imp. Fund	18½ %	$275,200 00	
"	"	"	Nov.	24, 1864	35,776 00	Folio 166	Jour. D Int. Imp. Fund	13 %	275,200 00	
"	"	"	Feb.	4, 1874	9,632 00		Treasurer B. this date	3½ %	275,200 00	
"	"	"	Feb.	7, 1883	9,356 00		" "	3 %	275,200 00	
"	"	"	Dec.	14, 1882	9,356 00		" "	3 %	275,200 00	

‡Total payment $37,875.00. Balance already claimed.
•Total $7,905 00 Balance already claimed.
†Total $11,135.25. Balance already claimed.
§Total $67,904.00. Balance already claimed.

DEFENDANT'S EXHIBIT No. 12—1863—4 Sheets.

Sheet 3.

Hillman Exhibit 12.
Defendant Exhibit 12.
(Corresponds with Exhibit 12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to June 20, 1863.

Name of Stock.		Date Paid.	Amt.	Reference.		On Account Of.			
Richmond, Fredericksburg & Potomac R. R. Co.	Stock	Jan. 19, 1884	$ 30,407 00	Treasurer's Blotter this date	6½ %	$467,800.00	Stock & Div.	Bonds.	
"	"	Jan. 27, 1887	28,068 00	" "	6 %	"	"	"	
"	"	July 28, 1887	14,034 00	" "	3 %	"	"	"	
"	"	Jan. 19, 1888	16,373 00	" "	3½ %	"	"	"	
"	"	Aug. 3, 1888	16,373 00	" "	3½ %	"	"	"	
"	"	Jan. 28, 1889	16,373 00	" "	3½ %	"	"	"	
"	"	July 18, 1889	16,373 00	" "	3½ %	"	"	"	
"	"	Jan. 17, 1890	14,034 00	" "	3 %	"	"	"	
		July 19, 1890	16,373 00	" "	3½ %	"	"	"	
"	"	Jan. 22, 1891	16,373 00	" "	3½ %	"	"	"	
"	"	July 20, 1891	16,373 00	" "	3½ %	"	"	"	
"	"	Jan. 21, 1892	16,373 00	" "	3½ %	"	"	"	
"	"	July 21, 1892	16,373 00	" "	3½ %	"	"	"	
"	"	Jan. 11, 1893	16,373 00	" "	3½ %	"	"	"	
"	"	July 3, 1893	16,373 00	" "	3½ %	"	"	"	
"	"	Jan. 10, 1894	16,373 00	" "	3½ %	"	"	"	
"	"	July 5, 1894	14,034 00	" "	3 %	"	"	"	
"	"	Jan. 8, 1895	16,373 00	" "	3½ %	"	"	"	
"	"	July 8, 1895	16,373 00	" "	3½ %	"	"	"	

DEFENDANT'S EXHIBIT No. 12—1863—4 Sheets.

Sheet 3. (*Continued*)

"	"	Jan.	16, 1896	16,373 00	"	"	3½ %	"	"	"
"	"	July	16, 1896	16,373 00	"	"	3½ %	"	"	"
"	"	Jan.	8, 1897	16,373 00	"	"	3½ %	"	"	"
"	"	July	13, 1897	14,034 00	"	"	3%	"	"	"
"	"	Jan.	10, 1898	16,373 00	"	"	3½ %	"	"	"
"	"	July	6, 1898	16,373 00	"	"	3½ %	"	"	"
"	"	Jan.	9, 1899	16,373 00	"	"	3½ %	"	"	"
"	"	July	3, 1899	16,376 50	"	"	3½ %	467,900.00	Plus Div. Bond.	
"	"	Jan.	2, 1900	18,716 00	"	"	4%	"	"	"
"	"	July	9, 1900	18,716 00	"	"	4%	"	"	"
"	"	Jan.	4, 1901	18,716 00	"	"	4%	"	"	"
"	"	July	5, 1901	18,716 00	"	"	4%	"	"	"
"	"	Jan.	3, 1902	18,716 00	"	"	4%	"	"	"
"	"	July	1, 1902	18,716 00	"	"	4%	"	"	"
"	"	Feb.	4, 1903	18,716 00	"	"	4%	"	"	"
"	"	July	2, 1903	18,716 00	"	"	4%	"	"	"
"	"	Jan.	4, 1904	18,716 00	"	"	4%	"	"	"
"	"	July	1, 1904	18,716 00	"	"	4%	"	"	"
"	"	Jan.	3, 1905	21,055 50	"	"	4½ %	"	"	"
"	"	July	1, 1905	21,055 50	"	"	4½ %	"	"	"
"	"	Jan.	2, 1906	21,055 50	"	"	4½ %	"	"	"
"	"	July	5, 1906	21,055 50	"	"	4½ %	"	"	"
"	"	Jan.	3, 1907	21,055 50	"	"	4½ %	"	"	"
"	"	July	1, 1907	26,316 00	"	"	4½ %	584,800 00		
"	"	Jan.	3, 1908	26,320 50	"	"	4½ %	584,900 00		
	"	July	1, 1908	26,320 50	"	"	4½ %	"	"	"

DEFENDANT'S EXHIBIT No. 12—1863—4 Sheets.

Sheet 4.

Hillman Exhibit 12.
Defendant Exhibit 12.
(Corresponds with Exhibit 12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing various amounts of Dividends received by the State of Virginia from stocks held by said State subsequent to June 20, 1863.

Name of Stock.	Date Paid.	Amt.	Reference.	On Account Of.
Richmond, Fredericksburg & Potomac R. R. Co.	Stock Jan. 2, 1909	$ 26,320 50	Treasurer's Blotter this date	4½ % $584,900.00 Plus Div. Bond.
"	" July 1, 1909	26,320 50	" "	4½ % " "
"	" Jan. 4, 1910	26,320 50	" "	4½ % " "
"	" July 2, 1910	26,350 50	" "	4½ % " "
"	" Jan. 3, 1911	26,350 50	" "	4½ % " "
"	" July 1, 1911	26,350 50	" "	4½ % " "
"	" Jan. 2, 1912	26,350 50	" "	4½ % " "
"	" July 1, 1912	26,350 50	" "	4½ % " "
"	" Jan. 2, 1913	26,350 50	" "	4½ % " "
"	" July 1, 1913	26,350 50	" "	4½ % " "
"	" Jan. 2, 1914	26,350 50	" "	4½ % " "
		$2,485,116 41		

DEFENDANT'S EXHIBIT No. 12—1863—4 Sheets.

Sheet 4. (*Continued*)

Bank of Virginia	" June 25, 1863	7,423 50	"	"	Dividend on Stock.
"	" June 25, 1863	29,382 50	"	"	" "
Exchange Bank	" July 10, 1863	1,335 00	"	"	" "
"	" July 10, 1863	42,440 00	"	"	" "
Grand Total Dividends		$2,565,697 41			

DEFENDANT'S EXHIBIT No. 13—1863—3 Sheets.

Sheet 5.

Hillman Exhibit 12.
Defendant Exhibit 12.
(Corresponds with Exhibit 12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing various amounts of interest received by the State of Virginia from Loans, etc., held by said State subsequent to June 20, 1863.

Name.	Date Paid.	Amount.	Reference.	On Account Of.	Note.
Orange & Alexandria R. R. Co. Loan	June 23, 1863	$ 9,284 50	Treasr's Blotter this date	Int. on Loan	
" " " "	Jan. 16, 1864	2,823 56	" " " "	" " "	
" " " "	Sept. 8, 1864	14,000 00	" " " "	" " "	
" " " "	Dec. 31, 1864	7,677 68	" " " "	" " "	
" " " "	Jan. 1, 1865	60 86	Snkg. Fund Rec'd, p. 191	" " "	
" " " "	Aug. 26, 1868	20,000 00	Treasr's. Blotter this date	" " "	
" " " "	Nov. 1, 1868	30,689 45	Jr. "N," B. of P. W., p. 389	" " "	
" " " "	Mch. 28, 1872	43,510 92	" " " "	" " "	
" " " "	Oct. 17, 1872	7,050 11	" " " 407	" " "	
Richmond & Danville R. R. Co. Loan	Sept. 9, 1863	33,086 70	Treasr's. Blotter this date	" " "	
" " " "	Aug. 29, 1864	32,551 90	" " " "	" " "	
" " " "	Sept. 5, 1868	35,470 56	Stm't. in File Box C. Com.	" " "	
" " " "	Sept. 12, 1868	11,885 40	" " " "	" " "	
" " " "	Sept. 15, 1868	10,000 00	" " " "	" " "	
" " " "	Sept. 24, 1868	11,900 25	" " " "	" " "	
" " " "	Oct. 2, 1868	2,805 00	" " " "	" " "	
" " " "	Oct. 6, 1868	11,774 14	" " " "	" " "	
" " " "	Oct. 6, 1868	1,290 00	" " " "	" " "	
" " " "	Dec. 31, 1868	2,917 63	" " " "	" " "	

DEFENDANT'S EXHIBIT No. 13—1863—3 Sheets.

Sheet 5. (*Continued*)

"	"	"	"	Sept.	3, 1868	42,000 00	Treasr's. Blotter this date			"	"	"
"	"	"	"	Sept.	15, 1869	21,000 00	"	"	"	"	"	"
"	"	"	"	Dec.	15, 1869	8,912 07	"	"	"	"	"	"
"	"	"	"	May	7, 1870							
"	"	"	"	Sept.	10, 1870	31,259 74	"	"	"	"	"	"
"	"	"	"	June	3, 1871	21,000 00	"	"	"	"	"	"
"	"	"	"	Feb.	15, 1872							
"	"	"	"	Mch.	15, 1872	40,230 64	"	"	"	"	"	"
"	"	"	"	Sept.	30, 1874	44,485 00	"	"	"	"	"	"
"	"	"	"	Oct.	13, 1874	12,915 00	"	"	"	"	"	"
"	"	"	"	Nov.	27, 1875	6,000 00	"	"	"	"	"	"
"	"	"	"	Dec.	1, 1875	5,724 00	"	"	"	"	"	"
"	"	"	"	Oct.	2, 1876	31,130 00	Min.of Snkg. Fd.,		p.	214	"	"
"	"	"	"	June	27, 1877	20,777 88	"	"	"	218	"	"
"	"	"	"	Jan.	7, 1879	30,462 85	"	"	"	223	"	"
"	"	"	"	Sept.	30, 1879	62,067 70	"	"	"	227	"	"
"	"	"	"	Sept.	30, 1879	1 69	"	"	"	227	"	"
"	"	"	"	Dec.	5, 1879	4,152 63	"	"	"	228	"	"
"	"	"	"	Dec.	5, 1879						"	"
"	"	"	"	Nov.	26, 1880	22,289 31					"	"
"	"	"	"	Sept.	30, 1881						"	"
"	"	"	"	Nov.	26, 1881	25,718 31	"	"	"	230	"	"
"	"	"	"	Nov.	23, 1886	18,900 00	"	"	"	285	"	"
Virginia Central R. R. Div. Bonds				Nov.	3, 1863	3,519 00	Treasr's. Blotter this date				Int. on Div. Bonds	
"	"	"	"	Aug.	25, 1870	23,601 00	Stm't in File Box C. Com.				"	"

Bonds deposited B.P. W. 8/25/70 See report 2d Auditor for 1871.

DEFENDANT'S EXHIBIT No. 13—1863—3 Sheets.

Sheet 6.

Hillman Exhibit 12.
Defendant Exhibit 12.
(Corresponds with Exhibit 12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing various amounts of interest received by the State of Virginia from Assets held by said State subsequent to June 20, 1863.

Name.	Date Paid.	Amount.	Reference.	On Account of
• Virginia Central R. R. Loan	July 21, 1863	$ 446 67	Jour. D. Int. Imp. Fd. p. 155	Int. on Loan
" " " " "	Jan. 8, 1864	7,350 00	" " " " " " 165	" " "
" " " " "	Sep. 19, 1864	7,350 00	" " " " " " "	" " "
" " " " "	July 30, 1868	7,350 00	Treasr's. Blotter this date	" " "
" " " " "	Sep. 17, 1868	7,350 00	" " " "	" " "
" " " " "	Aug. 25, 1870	48,573 40	" " " "	" " "
Winchest'r & Pot'm'c R. R. An'ty.	Sep. 30, 1873	35,184 79	Jour. D. Int. Imp. Fd. p. 175	Ar. of Annuity *
•• Southside R. R. Co. Loan	July 6, 1863	15,624 31	" " " " " " 155	Int. on Loan
" " " " "	Aug. 8, 1863	10,897 66	Treasr's. Blotter this date	" " "
" " " " "	Aug. 17, 1863	21,000 00	" " " "	" " "
" " " " "	Sep. 16, 1863	20,102 34	" " " "	" " "
Norfolk & Petersburg R. R. Loan	Jan. 11, 1864	45,000 00	" " " "	" " "
" " " " " "	Oct. 5, 1868	15,000 00	" " " "	" " "
" " " " " "	Sep. 28, 1869	9,561 41	" " " "	" " "
••• Washington College Loan	Aug. 26, 1863	3 65	Lit. Fd. Cash Bk. 5, not paged	" " "
" " "	Mch. 24, 1864	60 00	" " " "	" " "
" " "	Sep. 2, 1864	60 00	" " " "	" " "
" " "	Dec. 2, 1871	780 00	" " 1, page 18	" " "
" " "	Aug. 22, 1872	60 00	" " " " 22	" " "
" " "	Aug. 22, 1872	60 00	" " " "	" " "
" " "	Nov. 21, 1873	120 00	" " " " 36	" " "
" " "	July 21, 1874	120 00	" " " " 44	" " "

DEFENDANT'S EXHIBIT No. 13—1863—3 Sheets.

Sheet 6. (*Continued*)

"	"	"	July	23, 1875	120 00	"	"	"	"	52	"	"	"
"	"	"	July	17, 1876	120 00	"	"	"	"	62	"	"	"
"	"	"	Aug.	23, 1877	120 00	"	"	"	"	70	"	"	"
"	"	"	Aug.	26, 1878	120 00	"	"	"	"	78	"	"	"
"	"	"	July	16, 1879	120 00	"	"	"	"	86	"	"	"
"	"	"	July	6, 1880	60 00	"	"	"	"	90	"	"	"
"	"	"	Sep.	18, 1880	60 00	"	"	"	"	98	"	"	"
"	"	"	July	23, 1881	120 00	"	"	"	"	104	"	"	"
"	"	"	July	20, 1882	120 00	"	"	"	"	114	"	"	"
"	"	"	July	27, 1883	120 00	"	"	"	"	122	"	"	"
"	"	"	July	14, 1884	120 00	"	"	"	"	130	"	"	"
"	"	"	July	14, 1885	120 00	"	"	"	"	140	"	"	"
"	"	"	July	14, 1886	120 00	"	"	"	"	150	"	"	"
"	"	"	July	25, 1887	120 00	"	"	"	"	160	"	"	"
"	"	"	July	19, 1888	120 00	"	"	"	"	170	"	"	"
"	"	"	July	9, 1889	120 00	"	"	"	"	180	"	"	"
"	"	"	July	18, 1890	120 00	"	"	"	"	190	"	"	"
"	"	"	July	11, 1891	120 00	"	"	"	"	198	"	"	"
"	"	"	July	12, 1892	120 00	"	"	"	"	208	"	"	"
"	"	"	Jan.	6 1893	60 00	"	"	"	"	212	"	"	"
"	"	"	Oct.	7, 1893	60 00	"	"	"	"	218	"	"	"
"	"	"	Jan.	13, 1894	60 00	"	"	"	"	220	"	"	"
"	"	"	July	5, 1894	60 00	"	"	"	"	224	"	"	"

*Total payment, $7,350.00. Balance already claimed.

** Total, $28,000.00. Balance already claimed.

*** Total, $60.00. Balance already claimed.

*Bonds deposited with B. P. W. See report Second Auditor for 1871.

DEFENDANT'S EXHIBIT No. 13—1863—3 Sheets.

Sheet 7.

Hillman Exhibit 12.
Defendant Exhibit 12.
(Corresponds with Exhibit 12, Jan. 1, 1861.)

STATE OF WEST VIRGINIA.

Statement showing various amounts of interest received by the State of Virginia from Assets held by said State subsequent to June 20, 1863.

	Date Paid.	Amount.	Reference.	On Account of
Washington College Loan	July 2, 1895	$ 120 00	Lit. Fd. Cash Book No. 1 Page 234	Interest on Loan
" " "	Jan. 9, 1896	60 00	" " " " " " " 238	" " "
* Richmond Academy Bonds	Aug. 26, 1863	74	" " " " " 5 Not Paged	Int. on Bonds
" " "	Mch. 24, 1864	12 00	" " " " " " " "	" " "
" " "	Sep. 2, 1864	12 00	" " " " " " " "	" " "
" " "	Jan. 31, 1872	180 00	" " " " " " " 18	" " "
" " "	July 23, 1872	12 00	" " " " " " " 24	" " "
" " "	July 21, 1873	12 00	" " " " " " " 34	" " "
" " "	July 21, 1873	12 00	" " " " " " " 34	" " "
" " "	July 21, 1874	24 00	" " " " " " " 44	" " "
" " "	July 19, 1875	24 00	" " " " " " " 52	" " "
" " "	July 17, 1876	24 00	" " " " " " " 62	" " "
" " "	July 3, 1877	24 00	" " " " " " " 70	" " "
" " "	July 3, 1878	24 00	" " " " " " " 78	" " "
" " "	July 10, 1879	24 00	" " " " " " " 86	" " "
" " "	July 23, 1880	24 00	" " " " " " " 96	" " "
" " "	July 21, 1881	24 00	" " " " " " " 104	" " "
" " "	July 20, 1882	24 00	" " " " " " " 114	" " "
" " "	July 27, 1883	24 00	" " " " " " " 122	" " "

DEFENDANT'S EXHIBIT No. 13—1863—3 Sheets.

Sheet 7. (*Continued*)

"	"	"	Dec. 17, 1884	24 00	"	"	"	"	"	"	134	"	"
"	"	"	July 17, 1885	24 00	"	"	"	"	"	"	140	"	"
"	"	"	Mch. 8, 1886	12 00	"	"	"	"	"	"	146	"	"
"	"	"	July 28, 1886	12 00	"	"	"	"	"	"	150	"	"
"	"	"	Nov. 22, 1887	24 00	"	"	"	"	"	"	164	"	"
"	"	"	July 24, 1888	24 00	"	"	"	"	"	"	170	"	"
"	"	"	July 8, 1889	24 00	"	"	"	"	"	"	178	"	"
"	"	"	July 18, 1890	24 00	"	"	"	"	"	"	190	"	"
"	"	"	July 20, 1891	24 00	"	"	"	"	"	"	198	"	"
"	"	"	July 8, 1892	24 00	"	"	"	"	"	"	206	"	"
"	"	"	Oct. 7, 1893	12 00	"	"	"	"	"	"	218	"	"
"	"	"	Feb. 5, 1896	48 00	"	"	"	"	"	"	240	"	"
** Rich., Fred. & Pot'm'c, Div. Bonds			June 30, 1863	234 87	Board of Public Works Cash Book							"	"
"	"	"	Jan. 3, 1873	2,696 96	Sinking Fund Cash Book							"	"
"	"	"	Jan. 3, 1873	1,051 82	"	"	"	"				"	"
U. S. Government Claim, Exhibit 3				552.952 72									
Interest Grand Total				$2,342,178 30									

* Total, $12.00. Balance already claimed.

** Total, $3,866.56. Balance already claimed.

Dividend Grand Total	$2,565,697 41
Aggregate	$4,907,875 71

DEFENDANT'S EXHIBIT No. 10—Sub-Sheet.

Amounts of Taxes Assessed by the State of Virginia and Paid by West Virginia Counties to the State of Virginia from June 20, 1863, to April, 1865.

Law Processes.

1863 and Subsequent.

Counties.	Amounts.	
Pendleton	$ 34 20	
Greenbrier	350 15	
McDowell	13 34	
Mercer	38 83	
Jefferson	46 71	
Monroe	114 00	
Pocahontas	57 00	
	$654 23	

Redemption of Lands.

1863 and Subsequent.

Monroe	73 26	
Greenbrier	42 53	
McDowell	7 79	
	123 58	

GENERAL TAXES, 1863, AND SUBSEQUENT.

Mercer	31,206 46	
Monroe	45,488 57	
Greenbrier	74,664 07	
McDowell	1,200 00	
Pendleton	15,400 00	
Gilmer	3,317 24	
	171,276 34	$172,054 15

Del'nquent Taxes and Forfeited Lands.
NO DATES. Being judgments on bond of Commissioner's of delinqeut and forfeited lands.

Gilmer county	3,936 13	
Kanawha county	699 17	
Lewis county	3,575 00	
	8,210 30	8,210 30
Total		$ 180,264 45

DEFENDANT'S EXHIBIT No. 13.

FARMERS BANK OF VIRGINIA.

January 1, 1859. Page 24, Document 14.

Had surplus and contingent fund of	$ 343,477 53
And profits of the institution	166,695 72
Total available for dividends	510,173 25
In 1859 dividends were declared for	236,317 50
being 7½ per cent. on $3,150,900.00 Capital, which, if taken out of the above would leave a balance of	$ 273,855 75
Instead of this the bank showed on January 1, 1860, page 24, Document 14	
Surplus and Contingent	$ 331,040 09
Profits of the Institution	145,813 47
	$ 476,853 56

Which proves conclusively that the amount of $166,695.72 WAS NOT the entire earnings.

Advance now to the next year, January 1, 1860, page 24, Document 14.

Surplus and Contingent Fund was	$ 331,040 09
Profits of the Institution	145,813 47
	$ 476,853 56
Dividends for 1860, 7¼ per cent. on $3,150,900.00	$ 228,440 25
Which would leave a balance of	248,413 31
Instead of this the bank showed January 1, 1861, pages 14 and 15, Document 14	
Surplus and Contingent	$ 337,067 05
Profits of the Institution	138,101 18
Or	$ 475,168 23

Which proves conclusively that $145,813.47 WAS NOT the entire earnings. Therefore, we can confidently state that $138,101.18 was not the total earnings for year ending January 1, 1861.

EXCHANGE BANK OF VIRGINIA.

December 31, 1858, page 46, Document 14, shows in this bank..	
"Excess of Surplus and Assets" Dec. 31, 1858	$ 391,955 50
"Excess of Surplus and Assets" Dec. 31, 1859	$ 359,632 71
This latter item is on page 28, 1861, statement, divided as follows:	
Contingent Fund	$ 205,047 67
Profits of the Institution	154,585 04
	$ 359,632 71

Thus surely indicating the "identity" of Contingent Funds with surplus and profits as contended for by Mr. Hillman. It also indicated the correctness of the following:

Exchange Bank of Virginia and Branches, December 31, 1859, pages 46 and 47, Document 14.

EXCESS OF ASSETS, OR SURPLUS—	
Contingent Fund	$ 205,047 67
Profits of the Institution	$ 154,585 04
Total	$ 359,532 71
Then was declared a dividend in 1859 of 9 per cent. on $3,048,600.00 Capital Stock or	$ 274,374 00
Leaving a balance of	$ 285,158 71
Instead of this, the bank showed on December 31, 1860—	
Contingent Fund	$ 191,584 24
Profits of the Institution	$ 150.586 05
Total	$ 342,170 29

Proving conclusively that $154,585.04 was NOT the entire earnings.

DEFENDANT'S EXHIBIT No. 15.

In matter of the Potomac Steamboat Company stock, included in the assets of the Richmond, Fredericksburg and Potomac Railroad, March 31, 1861, $38,900.00.

Page 350, R., F. & P. Report of 1853, referring to the Washington and Fredericksburg Steamship Company (the original company of the Potomac Company, says: "In consequence of the low price paid for the steamboat company stock, the railroad company have since received 12 to 14 per cent. annual dividends," but states that this year (1853) the steamboat company lost money because they had to make connection with two trains per day. This loss was made the basis of a more liberal allowance by the R., F. & P. to the steamboat company in the division of rates, and then the steamboat company seems to have just paid its expenses.

Page 502, March 31, 1861, Report shows that the four boats of this company were seized by the United States Government for transports and war vessels. On the same report a dividend is shown on this stock and carried in surplus, of $33,360.00.

In April, 1862, page 507, they had credited this account $83,385.00, which increase of $50,025.00 was explained in the report of November, 1861 (written and not paged), when it was stated that Captain J. M. Robinson had turned over to the State the $50,025.00, their share of the amount paid by the United States Government for the four boats. This establishes that January 1, 1861, this asset was at least worth par.

In the matter of bills receivable:

This account varies from year to year, sometimes greater and sometimes less than the amount March 31, 1861. There is also shown in the disbursements from year to year purchases of bills receivable, hence it is inferrable that the account was good and collectible.

In the matter of value of cost of road and equipment:

The cost is carried forward carefully year to year, generally under classified headings, such as "Engineering," "Grading," "Bridges," etc., and contains no items that are not legitimate.

They had a yearly report by directors as to general conditions of road, and in almost every instance they report on roadway and rolling stock, and the report is always in excellent condition, showing that the repairs and renewals had taken care to keep the road in good condition.

In addition to this, we have the following items of "extraordinary" expenses charged to operating expenses, which extra expenses were additional items of cost of road and equipment.

Page 295, R., F. & P. Report, September 30, 1848, shows expenditures from earnings in capital accounts not charged to cost of road and equipment.....	$ 11,266 46
Page 10, R., F. & P. Report, 1849, shows extraordinary expenses	27,875 92

Page 362, 1852 report, says that the revenue has been sufficient not only to pay current expenses and the usual dividend, but to lay down heavier rail and carry 9 to 10,000 to surplus, no specific amount mentioned, but not charged to cost of road and equipment.

DEFENDANT'S EXHIBIT No. 15—*Continued.*

Page 346, 1853 report, says that the "expenses included cost of two locomotives, two additional coaches and new depot and passenger office at Fredericksburg," not charged to cost of road.		
Page 379, May, 1854, shows paid out of earnings for one new engine, four coaches and improvements to road and structures (in detail on report)..... No charge to cost of road for these.		20,986 55
Page 420, September 30, 1855, shows extraordinary expenses of		17,470 00
Consisting of rolling stock.....	$13,970 00	
Improvements to way and structure...	3,500 00	
Page 452, same book of reports, shows extraordinary expenses		20,700 00
Being rolling stock.....	$16,200 00	
Improvements	4,500 00	
Not charged to cost of road.....		98,298 83
Page 468, March 31, 1858, shows $17,810.00 extraordinary expenses, of which rolling stock is $7,810.00 and $6,000 may be classed as renewals and balance seems doubtful, we take.....		7,810 00
Page 483, March, 1859, shows extraordinary expenses, all rolling stock, not added to cost of road and equipment		11,085 00
Page 496, March, 1860, shows extraordinary expenses	$17,096 58	
of which	7,846 58	
may be considered renewals..... (viz: taking care of repreciation) and balance is new rolling stock not charged to cost of road.....	$ 9,250 00	9,250 00
Page 508, of report of March 31, 1861, shows $24,549.45 extraordinary expenses, of which only $6,400.00 is entitled to consideration as a capital expenditure.....		6,400 00
Total improvements determinable.....		$132,843 93

DEFENDANT'S EXHIBIT "Y."

True copies
J. L. BAITY,
Auditor.

WS-310

UNITED STATES OF AMERICA.

TREASURY DEPARTMENT.

August 13, 1914.

PURSUANT to Section 882 of the Revised Statutes I hereby certify that the annexed pages numbered 1 to 5, both are copies of papers on file in the claim of the State of Virginia against the United States, No. 215,264, in the office of the Auditor for the War Department, in this Department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed on the day and year first above written.

(Seal)

WILLIAM P. MALBURN.
Assistant Secretary of the Treasury.

J.

(COPY)

TREASURY DEPARTMENT
WASHINGTON
June 1, 1908.

Office of
AUDITOR FOR WAR DEPARTMENT
In replying quote initials

Hon. John Lamb,
House of Representatives,
Washington, D. C.

My Dear Mr. Lamb:

In reply to letter of John B. Lightfoot, Jr., Atty., Richmond, Va., referred by you to the Comptroller of the Treasury, May 22, 1908, and by him forwarded to this office, May 23, 1908, in reference to charge of $16,923.70 made against the State of Virginia, in settlement No. 7554 of the year of 1889, I have the honor to inform you that the amount charged against the State was deposited to the credit of Francis H. Pierpont as Governor of Virginia for the use of said State, in supplying arms and munitions of war to loyal citizens in revolted States, under Act of Congress of July 31, 1861 (12 Stat. 283) by Daniel Lamb, Disbursing Agent of the United States as follows:

In Merchants and Mechanics Bank of Wheeling,

Nov. 18, 1861	$7,500 00
In Northwest Bank of Virginia, Wheeling, Nov. 18, 1861	7,500 00
In Northwest Bank of Virginia, Wheeling, May 1, 1863	1,923 70
Total	$16,923 70

The money thus deposited was all applied in payment of Governor Pierpont's checks.

When the State of Virginia presented her claim for reimbursement of expenses incurred in aiding the United States in suppressing the rebellion, the accounting officers of the Treasury allowed amounts as follows:

July 4, 1862	$14,319 24
Feb 11, 1868	6,128 62
Dec. 5, 1868	8,779 32
Dec. 18, 1868	16,022 11
Total	$45,249 29

From the amount thus allowed the amount of $16,923.70 deposited to the credit of the Governor should have been deducted as an advance payment on such account, and it appears that one advance of $12,000.00 made directly from the United States Treasury was deducted, but the advance made through Mr. Lamb was not known to the accounting officers of the Treasury at the time of the settlement of Virginia's claim, Mr. Lamb's account not having been settled until a later date.

The net allowance to the State on said claim appears therefore to have been greater by $16,923.70 than was the amount really due.

In a subsequent claim of the State of Virginia under the provisions of the Act of May 27, 1902, however, there was found due the State the sum of $16,929.50, from which was deducted $16,923.70, the amount not heretofore deducted, leaving a balance of $5.50, which was paid the State in settlement No. 20,159, dated September 22, 1902.

Respectfully,

Auditor.

(COPY)

E. G. November 12, 1913.

The Honorable,
The Secretary of the Treasury:

Sir:

Referring to your indorsement of the 10th instant on the letter of the Hon. W. E. Chilton, U. S. Senate, requesting a copy of the settlement

made with the State of Virginia, concerning certain bonds of the State of Virginia which were held by the United States in trust for certain Indian tribes. I have the honor to inform you that, under the provisions of the Omnibus Claims Act of May 27, 1902 (32 Stat., 235), a settlement was made by this office under date of September 22, 1902, in which the mutual accounts between the State of Virginia and the United States were brought down to the period where they most nearly balanced, as provided in said act.

The statement of the account was as follows:

Principal due the State		$ 298,369 74
6% interest from July 1, 1814, to Feb. 11, 1894		1,425,212 79
		$1,723,582 53
From which deduct as follows:		
Principal of bonds held by United States	$ 594,800 00	
Interest from Jan. 1, 1861, to Feb. 11, 1894	1,181,669 33	
	$1,776,469 33	
Less interest at 4% for 3 years on $581,800.00	69,816 00	
	$1,706,653 33	
Add as offset amount charged the State on Treasury Settlement No. 7554, of 1889	16,923 70	
		$1,723,577 03
		$5.50

In explanation of this statement it is proper to add that the principal given above was the amount due July 14, 1829, after crediting all payments by the United States on the basis of partial payments and the interest includes $61,949.87 due at that date. The balance of the interest is that computed on the given principal from July 14, 1829.

The bonds on which interest was charged the State of Virginia in the above settlement consists of Virginia State stock, which had been purchased by the United States, as Trustee for certain Indian tribes, amounting to $581,800.00, and the balance of $13,000.00 was bonds of the Chesapeake and Ohio Canal Company, which were guaranteed by the State of Virginia, likewise acquired by the United States, as Trustee for certain Indian tribes.

Respectfully,

J. L. BAITY, Auditor.

M310

VIRGINIA STATE STOCK BELONGING TO

Number.	Date of issue.	Date of Maturity.	Amount.	Registered or Coupon.	Rate of Interest
17	Mar. 1, 1853	Nov. 27, 1858	$ 2,000	Registered	6%
117	July 9, 1860	Jan. 1, 1894	28,200	Registered	6%
860	Feb. 14, 1852	May 29, 1859	1,300	Registered	6%
861	Mar. 1, 1852	May 29, 1859	200	Registered	6%
1115	Feb. 14, 1852	Apr. 10, 1875	10,000	Registered	6%
1141	Mar. 1, 1852	Jan. 1, 1877	100	Registered	6%
115	July 9, 1860	Jan. 1, 1894	90,000	Registered	6%
116	July 9, 1860	Jan. 1, 1894	450,000	Registered	6%
			$581,800		

Date of default in interest on above registered bonds unknown in this

THE UNITED STATES.

Amount of interest.	Purpose for which used.
See note below.	Subscription to stock Roanoke Navigation Co.
	James River and Kanawha Co.
	Exchange and Northwestern Bank of Virginia.
	Exchange and Northwestern Bank of Virginia.
	Loans for internal improvement.
	Loans for internal improvement.
	James River and Kanawha Co.
	James River and Kanawha Co.

office. For information on this point consult Department of Interior.

CHEASAPEAKE AND OHIO CANAL COMPANY BONDS.

Number.	Date of Issue.	Date of Maturity.	Amount.	Rate of Interest.	Coupon Number.
10	Nov. 13, 1847	Nov. 13, 1882	$ 1,000	6%	42
872	May 1, 1849	May 1, 1884	500	6%	46
873	May 1, 1849	May 1, 1884	500	6%	46
488	Nov. 1, 1848	Nov. 1, 1883	1,000	6%	50
1492	Nov. 1, 1849	Nov. 1, 1884	1,000	6%	46
1490	Nov. 1, 1849	Nov. 1, 1884	1,000	6%	46
1419	Oct. 1, 1849	Oct. 1, 1884	1,000	6%	46
1420	Oct. 1, 1849	Oct. 1, 1884	1,000	6%	46
1140	Aug. 1, 1849	Aug. 1, 1884	1,000	6%	46
1048	Feb. 2, 1849	Feb. 2, 1884	1,000	6%	46
487	Nov. 1, 1848	Nov. 1, 1883	1,000	6%	46
482	Nov. 1, 1848	Nov. 1, 1883	1,000	6%	46
857	May 1, 1849	May 1, 1884	1,000	6%	46
1493	Nov. 1, 1849	Nov. 1, 1884	1,000	6%	46
			$13,000		

Office of Treasurer U. S.,
February 9, 1900.

GUARANTEED BY STATE OF VIRGINIA

Amount.	Purpose for Which Issued.
$ 1,260	Chesapeake and Ohio Canal Construction.
690	Chesapeake and Ohio Canal Construction.
690	Chesapeake and Ohio Canal Construction.
1,500	Chesapeake and Ohio Canal Construction.
1,380	Chesapeake and Ohio Canal Construction.
1,380	Chesapeake and Ohio Canal Construction.
1,380	Chesapeake and Ohio Canal Construction.
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1,380	Chesapeake and Ohio Canal Construction.
1,380	Chesapeake and Ohio Canal Construction.
1,380	Chesapeake and Ohio Canal Construction.
$17,940	

DEFENDANT'S EXHIBIT "Z."

UNITED STATES OF AMERICA.

TREASURY DEPARTMENT,

August 14, 1914.

PURSUANT to Section 882 of the Revised Statutes, I hereby certify that the annexed copy of letter, dated April 4, 1903, of Acting Secretary of the Treasury M. E. Ailes, to the Treasurer, U. S., is a true copy of the original on file in this department.

In witness whereof, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

B. R. NEWTON.
Assistant Secretary of the Treasury.

(Seal.)

Office of
The Secretary.

TREASURY DEPARTMENT
WASHINGTON
April 4, 1903.

(COPY)

The Treasurer U. S.
Sir:

Provision having been made by Congress in the act of May 27, 1902 (32 Stat., p. 235), for adjustment of the claims of the State of Virginia for and on account of advances and expenditures made in the War of 1812-1815 with Great Britain, and settlement having been made with the State under the act referred to by the payment of the sum of $5.50 (see War Warrant No. 7002 of April 4, 1903), you are hereby authorized to cancel the bonds of the State of Virginia amounting to $594,800 and coupons attached now held as a debt of the State to the United States, and forward the same by registered mail to the Governor of Virginia, at Richmond, Virginia.

Respectfully,
(Signed) M. E. AILES,
Acting Secretary.

DEFENDANT'S EXHIBIT AA—Sheet 1.

16 TREASURY DEPARTMENT.

TABLE No. 2.

Treasury Department,

Report of Treasurer for the Norfolk & Petersburg Division, from

LIABILITIES.

For Capital Stock.

Amount authorized by Charter	1,800,000 00		
Less Amount cancelled	1,200 00	1,798,800 00	
I. ORDINARY.			
1. By A., M. & O. R. R. Co. purchased of State of Va..	817,500 00		
2. By City of Norfolk..	500,000 00		
3. By Individuals	43,800 00		
		1,361,300 00	
II. PREFERRED.			
1. By A., M. & O. R. R. Co., purchased of State of Virginia.....	300,000 00		
III. GUARANTEED.			
1. By A., M. & O. R. R. Co., purchased of State of Va.	82,500 00		
2. By City of Norfolk..	55,000 00	137,500 00	..... 1,798,800 00

For Funded Debt.

I. FIRST MORTGAGE BONDS.			
1. Eight per cents, maturing Jan. 1, 1887	306,000 00		
2. Seven per cents, maturing Jan. 1, 1877	157,000 00	463,000 00	
II. SECOND MORTGAGE BONDS.			
1. Eight per cents, maturing July 1, 1893	.....	458,000 00	921,000 00

For Special Debt.

A., M. & O. R. R. CO.			
1. By loan formerly due State of Virginia. payable annually by Redemption Fund. purchased under the Act of General Assembly forming the A., M. & O. R. R. Co., approved June 17, 1870	136,591 64		
2. By open account (balance of interest due State), acquired under same Act of Assembly as above	40,496 41	177,088 05	

DEFENDANT'S EXHIBIT AA—Sheet 1.

TREASURY DEPARTMENT. 17

TABLE No. 2.

A., M. & O. R. R. Company.

Organization to termination of Fiscal Year, ending Sept. 30, 1873

RESOURCES.

By Property Account.

COST OF PROPERTY. Road and Equipment, absorbing all accounts relating to construction, rolling stock, etc., to September 30, 1872		2,777,888 52	
ENHANCED VALUE OF PROPERTY, to be absorbed eventually by Property Account— Outlay from October 1, 1872, to September 30, 1873			
1. Right of Way	3,600 00		
2. Graduation	13,066 13		
3. Masonry and Trestle Work	15,022 46		
4. Bridge Superstructure	6,690 95		
5. Railway Track	32,034 33		
6. Depot Grounds	5,412 29		
7. Station Buildings and Machine Shops	17,268 17		
8. Rolling Stock	9,415 67		
9. Machinery, Tools and Fixtures	722 59		
10. Ballasting	15,126 28	118,358 87	2,896,247 39

By Current Expenses.

EXPENDITURES FOR FISCAL YEAR 1872-73, audited in conformity with the system adopted distributing accounts in Co-ordinate Departments:			
I. Road	30,663 56		
II. Machinery	37,212 96		
III. Transportation	112,487 48		
IV. Treasury	35,023 38		215,387 38

By Assets.

I. BILLS RECEIVABLE.			
1. Notes and Acceptances	1,916 67		
2. Open Accounts (A., M. & O. R. R. Co.)	141,033 88	142,950 55	

DEFENDANT'S EXHIBIT AA—Sheet 1.

Continued.

INTEREST FUNDED DEBT.		
By balance to the credit of this account	1,221 75	178.309 80
For Income.		
REVENUE.		
For fiscal year 1872-73		433.119 33
For Auxiliary Acct.		
PROFIT AND LOSS.		
Balance to the credit of account..		84.493 48
Total .....Dollars....		3.415,722 61

DEFENDANT'S EXHIBIT AA—Sheet 1.

Continued.

II. Va. State Bonds, Registered and Consols		51,095 59	
III. Southside First Preferred Bonds		15,858 24	
IV. City of Norfolk Scrip		7,130 00	
V. Real Estate at Ivor		12,807 95	229,842 33

By Auxiliary Account.

I. INTEREST. Coupon. and Guaranteed, absorbed by Interest on Funded Debt in this fiscal year	72,607 41		
II. EXECUTIVE EXPENSES. Balance to debit of this Account	1,638 10		74,245 51
Total		Dollars	3,415,722 61

DEFENDANT'S EXHIBIT AA—Sheet 2.

18 TREASURY DEPARTMENT.

TABLE No. 3.

Treasury Department,

Report of Treasurer for the South Side Division, from its

LIABILITIES.

For Capital Stock.

Amount authorized by Charter		1,400,000 00	
1. Less amount not taken	28,200 00		
2. Less amount purchased by Company to make witnesses in suits vs. the same	6,200 00	34,400 00	
		1,365,600 00	
ORDINARY.			
By A. M. & O. R. R. Co., purchased of State of Virginia	803,500 00		
2. By the City of Petersburg	300,000 00		
3. By the Town of Farmville	20,200 00		
4. By Individuals	241,900 00	.....	1,365,600 00

For Funded Debt.

1. CONSOLIDATED MORTGAGE BONDS			
1. First Preferred, 8 per cent. maturing January 1, 1884 to 1890..	675,000 00		
2. Second Preferred, 6 per cent. maturing January 1, 1884 to 1890..	621,000 00		
3. Third Preferred, 6 per cent. maturing January 1, 1886 to 1900..	452,000 00	1,748,800 00	
II. OLD THIRD MORTGAGE 6 per cent. Bonds, unexchanged		3,400 00	1,752,200 00

For Special Debt.

I. ATLANTIC, MISSISSIPPI & OHIO CO.			
By Loan formerly due State of Virginia, payable annually by Redemption Fund purchased under the Act of the General Assembly forming the A., M. & O. R. R. Co., approved June 17th, 1870.....		708,102 34	
II. INTEREST ON FUNDED DEBT.			
Balance to the credit of this Account.....		21,777 25	729,879 59

DEFENDANT'S EXHIBIT AA—Sheet 2.

TREASURY DEPARTMENT. 19

TABLE No. 3.

A., M. & O. R. R. Company.

Organization to termination of Fiscal Year ending Sept. 30, 1873.

RESOURCES.

By Property Account.

COST OF PROPERTY.			
Road and Equipment, absorbing all accounts relating to construction, purchase of Rolling Stock, etc., to September 30th, 1872	.....	5,309,048 86	
1. Engineering	105 12		
2. Right of Way	170 75		
3. Graduation	29,037 46		
4. Masonry and Trestle Work ...	8,116 94		
5. Bridge Superstructure	18,893 89		
6. Railway Track	232,362 30		
7. Depot Grounds	5,001 85		
8. Station Buildings and Machine Shops	20,450 93		
9. Rolling Stock	59,040 57		
10. Machinery, Tools and Fixtures	16,609 06		
11. Ballasting	46,760 58	431,549 45	5,740,598 31

By Auxiliary Accounts.

INTEREST.			
Coupon last semi-annual, etc, absorbed by interest on Funded Debt account, etc., in this fiscal year	.....	119,415 16	
EXECUTIVE EXPENSES.			
Balance to debit of this account.		2,457 15	121,872 31

By Current Expenses.

EXPENDITURES FOR FISCAL YEAR 1872-73.			
Audited in conformity with the system adopted, distributing account in Co-ordinate Departments.			
I. Road	64,672 89		
II. Machinery	60,864 66		
III. Transportation	152,204 48		
IV. Treasury	46,950 78	.....	324,692 81

DEFENDANT'S EXHIBIT AA—Sheet 2.

Continued.

For Auxiliary Acct.	
PROFIT AND LOSS.	
Balance to the credit of this Account.....	525,791 86
For Income.	
REVENUE.	
For Fiscal Year 1872-73.....	611,065 09
For Floating Debt.	
BILLS PAYABLE.	
Open Accounts (A., M. & O.).....	1,207,129 89
Total.....Dollars....	6,191,663 43

DEFENDANT'S EXHIBIT AA—Sheet 2.

Continued.

By Assets.

BILLS RECEIVABLE.	
Notes and Acceptances	4,500 00
Total.....Dollars.....	6,191,663 43

DEFENDANT'S EXHIBIT AA—Sheet 3

20 TREASURY DEPARTMENT.

TABLE No. 4.

Treasury Department,

Report of Treasurer for the Virginia &Tennessee Division, from its

LIABILITIES.

For Capital Stock.

Amount authorized by Charter.....			3,500,000 00	
I. ORDINARY.				
1. By A., M. & O. R. R. Co., purchased of the State of Virginia.....	1,716,800			
2. By individuals (of which there remains unpaid $9,009 30)	1,150,800	2,897,600 00		
II. PREFERRED.				
1. By A., M. & O. R. R. Co., purchased of the State of Virginia..		500,000 00		
III. GUARANTEED.				
1. By A., M. & O. R. R. Co., purchased of the State of Virginia.....	83,200			
2. By Individuals	55,000	138,700 00	.....	3,506,300 00

For Funded Debt.

I. FIRST MORTGAGE 6 per cent. Bonds due Jan. 1, 1873		42,000 00	
II. THIRD MORTGAGE 6 per cent. Bonds, due July 1, 1884		990,000 00	
III. INCOME MORTGAGE 6 per cent. Bonds, due January 1, 1866....		*93,500 00	
IV. FOURTH MORTGAGE 8 per cent. Bonds, due March 1. 1890		870,000 00	
V. REGISTERED CERTIFICATES, 8 per cent. due January 1, 1871 and 1880		118,295 04	
VI. INTEREST FUNDING 8 per cent. Bonds due January 1, 1880		226,300 00	2,340,095 04

For Special Debt.

I. A., M. & O. R. R. Co.		
1. Loan formerly due State of Va., purchased by the A., M. & O. R. R. Co., under the Act of General Assembly. forming said Company, approved June 17, 1870..	1,000,000 00	

DEFENDANT'S EXHIBIT AA—Sheet 3.

TREASURY DEPARTMENT. 21

TABLE No. 4.

A., M. & O. R. R. Company.

Organization to termination of Fiscal Year ending Sept. 30, 1873.

RESOURCES.

By Property Account.

COST OF PROPERTY.			
Road and Equipment, absorbing all accounts relating to construction, rolling stock, etc., to September 30, 1873		9,527,999 68	
ENHANCED VALUE OF PROPERTY—			
To be absorbed eventually by Property Account—Outlay from October 1, 1872, to Sept. 30, 1873:			
1. Engineering	376 69		
2. Graduation	33,833 64		
3. Masonry and Trestle Work	23,037 89		
4. Bridge and Superstructure	4,800 11		
5. Railway Track	399,360 32		
6. Depot Grounds	4,000 00		
7. Station buildings and Machine Shops	51,361 75		
8. Rolling Stock	100,221 27		
9. Machinery, Tools and Fixtures	13.338 14		
10. Ballasting	76.388 11	706,717 92	10.234.717 60

By Auxiliary Account.

I. INTEREST.			
Coupon, Registered Certificates, etc., paid and funded in fiscal year, absorbed by Interest on Funded Debt Account	177,931 16		
II. EXECUTIVE EXPENSES.			
Balance to debit of this Account	4,095 25		182,026 41

By Current Expenses.

EXPENDITURES FOR FISCAL YEAR 1872-'73, audited in conformity with the system adopted, distributing accounts in Co-ordinate Departments:			
I. Road	147,783 97		

DEFENDANT'S EXHIBIT AA—Sheet 3.

(*Continued*)

II. REGISTERED CERTIFICATE No. 200, formerly due the State of Virginia, purchased by the A., M. & O. R. R. Co., under same Act of General Assembly of Va., approved June 17, 1870	79,040 00	1,079,040 00	
III. INTEREST ON FUNDED DEBT Balance to the credit of this Account		827 02	1,079,867 02
For Auxiliary Account.			
PROFIT AND LOSS. Balance to the credit of this Account.			797,644 78
For Income.			
REVENUE. For Fiscal Year 1872-'73			1,118,671 79
For Floating Debt.			
BILLS PAYABLE. Open Accounts—(A., M. & O. Co.)			2,313,804 41
Total.....Dollars....			11,156,383 04

*93,000 of this issue has been exchanged for the Bonds of the Atlantic, Mississippi & Ohio 1st Mortgage Gold Seven per cent. issue.

DEFENDANT'S EXHIBIT AA—Sheet 3.

Continued.

II. Machinery	151,810 69		
III. Transportation	321,441 06		
IV. Treasury	112,603 31	.....	739.639 03

Total.....Dollars.... 11,156,383 04

DEFENDANT'S EXHIBIT AA—Sheet 4.

22 TREASURY DEPARTMENT.

TABLE No. 5.

Treasury Department,

Report of Treasurer, for the Virginia & Kentucky Division, from its

LIABILITIES.

For Capital Stock.

Amount subscribed under the Charter		251,200 00	
ORDINARY.			
1. By A., M. & O. R. R. Co., purchased of State of Va.	103,400 00		
3. By County of Scott, County of Lee and Individuals	147,800 00		251,200 00

Total.....Dollars.... 251,200 00

DEFENDANT'S EXHIBIT AA—Sheet 4.

TREASURY DEPARTMENT. 23

TABLE No. 5.

A., M. & O. R. R. Company.

Organization to termination of Fiscal Year, ending Sept. 30, 1873.

RESOURCES.

By Property Account.

COST OF PROPERTY.			
Road expenses, absorbing all accounts relating to Graduation etc., to September 30th, 1871		150,976 82	
ENHANCED VALUE OF PROPERTY—			
To be absorbed eventually by property account, Outlay from October 1st, 1872, to September 30th, 1873.			
1. Engineering	15,885 93		
2. Right of Way	479 35	16,365 28	167,342 10

For Auxiliary Account.

PROFIT AND LOSS.			
Balance to the debit of this account	24,333 96		
2. EXECUTIVE EXPENSES.			
Balance to the debit of this account	1,205 72		25,539 68

By Assets.

BILLS RECEIVABLE.			
1. Notes and Acceptances.	5,950 00		
2. Open Accounts, A., M. & O. R. R. Co.,	52,368 22		58,318 22
Total		Dollars	251,200 00

DEFENDANT'S EXHIBIT BB—Sheet 1.

22

B

Auditor's Annual Statement of Receipts, Disbursements and Liabilities of the 1847, to Sept. 30 1865.

RECEIPTS.

To capital stock			2,000,000 00
To loan from State of Virginia, redeemable in about 34 years, from April 8, 1853, to September 17, 1854			600,000 00
To bonds guaranteed by the State of Virginia, redeemable in 1875			200,000 00
To 4th mortgage registered bonds, redeemable in 1873	504,000 00		
To premium on above	438,395 66		
		942,395 66	
To 4th mortgage coupon bonds, redeemable in 1875	322,000 00		
To premium on above	435,651 85		
		757,651 85	
			1,700,047 51
To transportation to September 30, 1864		8,138,306 77	
To transportation October 1, 1864, to March 31, 1865, in Confederate currency	4,516,732 19		
To transportation June 17, 1865, to September 30, 1865, in National currency	183,136 31		
		4,699,868 50	
			12,838,175 27
To extended bonds due in 1863			30,500 00

DEFENDANT'S EXHIBIT BB—Sheet 1.

23

Richmond and Danville Railroad Company, from organization, November 20,

DISBURSEMENTS.

	Confed. Currency	Nat. Currency	
By cost of road and property to September 30, 1864			5,906,566 93
By cost of transportation to September 30, 1864			3,281,644 45
By cost of Road and Property this year, viz:			
New buildings	15,105 03	1,873 09	
New wells and water stations	1,884 93		
New bridges and culverts	4,672 50		
New passenger, mail and baggage-cars	12,508 75		
New freight cars	8,627 50		
New engines	401,245 30		
New machinery for shops	27,185 50		
Depot improvements	9,529 92		
Relaying track	3,410 00	49 80	
	484,169 43	1,922 89	486,092 32
By cost of Transportation this year, viz:			
Repairs road	500,029 22	38,352 03	
Repairs bridges and culverts	8,481 91	2,761 15	
Repairs depots and water stations	12,492 45	782 41	
Repairs buildings	23,570 72	403 93	
Repairs engines	142,265 33	8,337 64	
Repairs passenger, mail and baggage cars	82,071 13	5,175 08	
Repairs freight cars	198,356 61	7,458 33	
Incline plane at Coalfield	17,137 00		
Shop expenses	168,397 96	810 89	
Train expenses	315,809 18	10,299 32	
Depot expenses	203,117 18	7,717 41	
Office expenses	39,509 56	507 35	
Miscellaneous expenses	20,000 00	398 21	
Telegraph expenses	28,156 07	1,405 04	
Contingent expenses	8,904 54	1,968 45	
Oil and tallow	230,144 25	1,281 34	
Cotton waste	12,468 60	206 62	
Wood	475,255 13	7,666 83	
Printing and advertising	1,912 75	1,104 75	
Car rent	203,816 34		
Stock killed	9,357 50		
Lost freight	57,085 44		
Salaries	29,080 14	2,684 23	

DEFENDANT'S EXHIBIT BB—Sheet 1.

Continued.

Liabilities:

Interest due on bonds	85,958 89	
Interest due Board of Public Works on loan of $600,000	42,000 00	
		127,958 89
To bills payable outstanding		600 00
To sundry accounts, per ledger		50,881 21
To Farmers Bank, due in Confederate currency		542,282 64
		$18,090,445 52

DEFENDANT'S EXHIBIT BB—Sheet 1.

Continued.

Premium on specie	815,653 09		
Negro clothing	33,362 50		
Provisions	8,226 88		
Supplies	240.298 57		
Interest	107,816 80		
	$3,992,776 85	$99,321 01	4,092,097 86
By delinquent stockholders, whose stock, 84 shares, is now owned by the Company			7,301 00
By State of Virginia, due on subscription to stock, and payment withheld because of non-payment by delinquent stockholders			11,401 50
By fund for redemption of loan of $600,000 from the State			68,908 65
By dividends to January 1, 1864			495,046 61
By stock in Piedmont Railroad Company			1,484,000 00
By Confederate States accounts due for transportation		121,864 33	
By Confederate States bonds received for transportation		1,062,075 00	
			1,183,939 33
By purchasing agent's accounts unsettled (but value received)			215,801 77
By sundry accounts, per ledger			85,999 87
By Piedmont Railroad Company, balance due			646,552 01
By accounts due from United States for transportation		29,069 52	
By accounts due from United States post office		1,752 92	
			30,822 44
By specie			8,269 38
By cash in Confederate currency		46,735 71	
By cash in national currency in bank		39,265 69	
			86,001 40
			$18,090,445 52

E. E. J. D. BLAIR, auditor.

DEFENDANT'S EXHIBIT BB—Sheet 2.

Auditor's Annual Statement of Receipts, Disbursements and Liabilities of 20, 1847, to Sept. 30, 1866.

RECEIPTS.

To Capital Stock			2,000,000 00
To Loan from State of Virginia, redeemable in about 34 years, from April 8, 1853, to September 30, 1854, by payment of annuity of 7 per cent			600,000 00
To Bonds guaranteed by State of Virginia, redeemable in 1875 and 1876,			200,000 00
To Bonds extended, due in 1863			30,500 00
To Bonds of 4th mortgage, Registered, redeemable in 1873			504,000 00
To Bonds of 4th mortgage, Coupons, redeemable in 1875			322,000 00
To Bonds for funding interest, redeemable in 1869 to 1876			61,000 00
To Transportation to September 30, 1865	12,838,175 27		
Less, Confederate currency, reduced	6,311,756 84	6,526,418 43	
To Transportation October 1, 1865, to September 30, 1866		672,714 00	7,199,132 43

DEFENDANT'S EXHIBIT BB—Sheet 2.

the Richmond and Danville Railroad Company, from its organization, Nov.

DISBURSEMENTS.

By Cost of Road and Property to September 30, 1865	6,392,659 25		
Less Confederate currency, reduced	2,138,529 80	4,254,129 45	
By Cost for Oct. 1, 1865, to Sept. 30, 1866, viz:			
New buildings	9,056 56		
New Wells and Water Stations	46 13		
New Bridges and Culverts	81,058 23		
New Passenger, Mail and Baggage Cars	24,788 96		
New Freight Cars	26,104 00		
New Engines	96,691 40		
New Machinery for Shops	226 43		
New Depot Lots	83,124 27		
Depot Improvements	7,198 91		
Relaying Track	334,780 00		
Land Damages	295 66	663,370 55	4,917,500 00
By Cost of Transportation to Sept. 30, 1865,	7,373,742 31		
Less, Confederate currency, reduced	3,458,422 41	3,915,319 90	
By Cost of Transportation Oct. 1 1865, to Sept 30, 1866, viz:			
Repairs Road	143,367 48		
Repairs Bridges and Culverts	11,561 76		
Repairs Depots and Water Stations	6,922 97		
Repairs Buildings	4,313 71		
Repairs Engines	44,592 03		
Repairs Passenger, Mail and Baggage Cars	39,512 44		
Repairs Freight Cars	19,402 14		
Shop Expenses	1,566 94		
Train Expenses	70,061 54		
Depot Expenses	54,520 01		
Office Expenses	587 30		
Miscellaneous Expenses	2,550 74		
Telegraph Expenses	10,065 46		
Contingent Expenses	6,515 27		
Oil and Tallow	8,328 16		
Cotton Waste	1,164 98		
Wood	39,122 90		
Printing and Advertising	8,058 26		
Car Rent	5,603 60		

DEFENDANT'S EXHIBIT BB—Sheet 2.

Continued.

LIABILITIES.

To Interest due on Bonds.....	79,547 40		
To Interest due the Board of Public Works on $600,000	84,000 00	163,547 40	
To Dividends		7,983 99	
To Loans		30,000 00	
To Bills Payable		699,307 59	900,838 98
To Sundry Accounts, per ledger.....			54,084 40
			$11,871,555 81

DEFENDANT'S EXHIBIT BB—Sheet 2.

Continued.

Stock Killed	1,065 14		
Lost Freight	3,889 15		
Salary	13,829 77		
Interest	110.703 44		
Internal Revenue Tax	16,739 11		
Casualities	208 57		
Lease of Piedmont Road to June 30, '66,	30.000 00	654,252 87	4.569,572 77
By Delinquent Stockholders, 84 shares, now held by the Co.		7,301 00	
By Subscription, due from State of Virginia		11,401 50	18,702 50
By Fund for redemption of State Loan of $600,000			74,908 65
By Dividend, $495,046 61, C. S. currency, reduced for balances due			480,123 10
By Stock in Piedmont Railroad Company			1,488.500 00
By Piedmont Railroad Company, balance due			202,575 70
By Sundry Accounts, per ledger			67,665 69
By Cash in Banks			52,007 40
			$11,871,555 81

E. E. J. D. BLAIR, Auditor

EXTRACT FROM REPORT RICHMOND & DANVILLE RAILROAD COMPANY

C.

Statement of Bills Payable of the Richmond and Danville Railroad Company for the year ending September 30, 1865

Notes outstanding September 30, 1864	$185,814 50	
Notes issued since September 30, 1864	266,437 87	
		$452,252 37
Notes paid this year	$451,652 37	
Notes now outstanding, due at the North before the war	600 00	
		$452,252 37

E. E.

J. D. BLAIR, Auditor.

D.

Resources of the Richmond and Danville Railroad Company, September 30, 1865.

Due by State of Virginia on subscription to stock	$ 11,401 50	
Due from eighty-four shares of stock owned by the company	8,400 00	
Due from the United States for transportation.	29,069 52	
Due from United States Postoffice Department.	1,752 92	
Due from Piedmont Railroad Company	646,552 01	
Due from stock in Piedmont Railroad Company.	1,484,000 00	
Due from accounts on the ledger	85,999 87	
Cash in bank	39,265 69	
Specie, $8,269.38, at 45 per cent. premium	11,990 60	
		$2,318,432 11
Less due by the company, per ledger	$ 50,881 21	
Due the Farmers' Bank in Confederate currency	542,282 64	
Extended bonds due	30,500 00	
Interest on bonds and loans due	127,958 89	
Dividends due	22,919 50	
Bonds guaranteed by the State	200,000 00	
Bills payable, outstanding	600 00	
Loan from the State—$600,000—about one-third paid	400,000 00	
Bonds for construction of Piedmont Railroad	826,000 00	
		$2,201,142 24
		$117,289 87

E. E.

J. D. BLAIR, Auditor.

(Taken from page 24, Reports R. & D. R. R., 1865 to 1871.)

C.

Abstract of Liabilities and Resources of the Richmond and Danville Railroad Company, September 30, 1866.

To loan of State of Virginia....$	600,000 00		
About one-third of which has been paid	200,000 00		
		$ 400,000 00	
To bonds guaranteed by State of Virginia, due 1875 and 1876		200,000 00	
To bonds extended, due 1863.....		30,500 00	
To bonds of fourth mortgage, registered, due 1873		504,000 00	
To bonds of fourth mortgage, coupons, due 1875		322,000 00	
To bonds for funding interest, due 1869 to 1876		61,000 00	
To interest due on bonds.....$	79,547 40		
To interest due Board of Public Works on $600,000.....	84,000 00		
To dividends	7,983 99		
To loans	30,000 00		
To bills payable.....	699,307 59		
		900,838 98	
To sundry accounts, per ledger.....		54,084 40	
			$2,472,423 38
By cost of road and property to September 30, 1866		$4,917,500 00	
By cost of 84 shares stock of the company..		7,301 00	
By subscription due from State of Virginia.		11,401 50	
By stock in Piedmont Railroad Company....		1,488,500 00	
By Piedmont Railroad Company, balance due		202,575 70	
By sundry accounts, per ledger.....		67,665 69	
By cash in banks.....		52,007 40	
			6,746,951 29
By surplus as to creditors of company.....			4,274,527 91
To capital stock			2,000,000 00
By surplus after paying back capital.....			$2,274,527 91

E. E.

J. D. BLAIR, Auditor.

D.

Statement of Bills Payable of the Richmond and Danville Railroad Company for the year ending September 30, 1866.

Notes outstanding September 30, 1865	$ 600 00	
Notes issued since	1,132,475 57	
		$1,133,075 57
Notes paid this year		433,769 98
Notes outstanding September 30, 1866		$ 699,305 59

E. E.

J. D. BLAIR, Auditor.

CERTIFICATE.

RICHMOND AND DANVILLE RAILROAD COMPANY,

Richmond, December 5, 1866.

We, the committee of accounts, have examined the books and accounts of the company to September 30, 1866, and find the same correct, and all the entries on the books supported by proper vouchers, and herewith present a list of balances from the ledger, showing the affairs of the company to that date.

A. Y. STOKES,
A. F. HARVEY.

(Taken from pages 96 and 97, Reports R. & D. R. R., 1865 to 1871.)

DEFENDANT'S EXHIBIT DOVER No. 1.

STATE OF WEST VIRGINIA.

Market Quotations for Stock of Richmond, Fredericksburg & Potomac R. R. Reported by Caskie G. Burch & Company, Richmond, Virginia, as shown by The Times-Dispatch, Richmond, Virginia, filed in the Virginia State Library.

Jan. 1, 1914 to Sept. 1, 1914.

Richmond Stock Market.

Date Quoted.	Par $100.	Bid.	Asked.
Jan. 24	Dividend obligations	305	$335
Jan. 31	Common	305	
Jan. 31	7 per cent. guaranteed	320	340
Jan. 31	Dividend obligations	305	
May 15	Dividend obligations	300	
May 16	Dividend obligations	300	
May 19	Dividend obligations	300	310
May 20	Dividend obligations	300	307½
May 21	Dividend obligations	300	305
May 22	Dividend obligations	302½	305
May 23	Dividend obligations	305	
May 26	Dividend obligations	302½	
May 27	Dividend obligations	302½	305
June 11	Dividend obligations	302	
June 12	Dividend obligations	302	
June 13	Dividend obligations	302	
June 16	Dividend obligations	302	
June 17	Dividend obligations	302	
June 18	Dividend obligations	302	
June 19	Dividend obligations	302	
June 20	Dividend obligations	302	
June 23	Dividend obligations	302	
June 24	Dividend obligations	302	
June 25	Dividend obligations	302	
June 26	Dividend obligations	302	
June 27	Dividend obligations	302	

(*Continued*)

May	28—Dividend obligations		304	June	30—Dividend obligations	302	
June	3—Dividend obligations	300	306	July	1—Dividend obligations	302	
June	4—Common	300		July	2—Dividend obligations	300	320
June	5—Dividend obligations	302	320	July	3—Dividend obligations	300	320
June	6—Dividend obligations	302	320	July	11—Dividend obligations	300	
June	10—Dividend obligations	302		July	25—Dividend obligations	290	302

FOLD OUT IS TOO LARGE TO BE FILMED

Plaintiff's Exhibits

1861-1863.

Prepared by
PARK, POTTER & CO.
Certified Public Accountants
New York, Chicago, Cincinnati and London
No. 149 Broadway, NEW YORK

PLAINTIFF'S EXHIBIT No. 1.

VIRGINIA *vs.* WEST VIRGINIA.

Sinking Fund Receipts and Disbursements and Bonds Issued for Interest.

Sinking Fund Receipts, January 1, 1861 *to December* 31, 1871.

	Dividend R. F. & P.	Bonds Va. Cent.	Interest Refunds	Commonwealth of Virginia.	Virginia & Tennessee R. R. % Mtg. $1,000,000.	Total.
Balance Jan. 1, 1861						$ 819,250 03
Between Jan. 1, 1860, and June 20, 1863	$275,520 00	$84,858 00	$ 3,400 50	$2,855,392 52		2,971,171 02
	$275,520 00	$84,858 00	$ 3,400 50	$2,855,392 52		$3,790,421 05
Balance June 20, 1863						$ 143,195 90
Between June 20, 1863, and April 1, 1865	$122,464 00		$ 4,620 00	$2,199,331 20	$886,685 00*	$3,213,100 20
No cash records from Apr. 1, 1865, to May 1, 1867.						
May 1, to Dec. 31, 1867	.....	.....	3,659 06	768,420 64		772,079 70
Year 1868	.....	.....	1,452 74	529,000 00		530,452 74
Year 1869	.....	.....	1,060 52	927,000 00		928,060 52
Year 1870	.....	.....	217 50	296,000 00		
For interest on bonds held by U. S. Govt.	.....	.....	.....	23,272 00		319,489 50
Year 1871	.....	.....	750 00	67,858 00		68,608 00
	$122,464 00		$11,759 82	$4,810,881 84	$886,685 00	$5,974,986 56

*This amount was afterward declared an illegal payment by the Virginia and Tennessee Railroad Co. and made void. $443,300.00 was returned as below and the balance is included in the $1,405,257.22 dropped out of the accounts of the Sinking Fund in 1865.

PLAINTIFF'S EXHIBIT No. 1.

VIRGINIA *vs.* WEST VIRGINIA.

Sinking Fund Receipts and Disbursements and Bonds Issued for Interest.

Sinking Fund Disbursements, January 1, 1861, *to December* 31, 1871.

	State Bonds. Purchased.	State Bonds. Redeemed.	Interest on State Debt.	Virginia & Tenn. R. R. % $1,000,000 Mtg. Payment Refunded.	Taxes on Interest Repaid to Commonwealth.	Balance Dropped & Unaccounted for	Total.
Between Jan. 1, 1861, and June 20, 1863..	$354,784 11	$269,313 38	$3,023,127 66				$3,647,225 15
Balance June 20, 1863							143,195 90
	$354,784 11	$269,313 38	$3,023,127 66				$3,790,421 05
Between June 20, 1863, and Apr. 1, 1865	$3,781 00		$1,503,957 88	$443,300 00*		$1,405,257 22	$3,356,296 10
No cash records from Apr. 1 ,1865, to May 1, 1867.							
May 1 to Dec. 31, 1867	.....	.....	610,990 16		10,929 85		621,920 01
Year 1868	.....	.....	680,567 43				680,567 43
Year 1869	.....	.....	882,179 73		25,419 54		907,599 27
Year 1870	.....	.....	314,869 47				
Int. to U. S. Gov't. % Indian Land Fund..	.....	.....	23,272 00				338,141 47

PLAINTIFF'S EXHIBIT No. 1.

(Disbursements Continued)

Year 1871			70,299 60			
Balance Dec. 31, 1871						$ 70,299 60 / 162 68
	$3,781 00	$4,086,136 27	$443,300 00	$36,349 39	$1,405,257 22	$5,974,986 56

Act of March 21, 1867 provides for payment of 2% Int. on debt excluding bonds given for interest by act of March 2nd, 1866. Act of Apr. 29, 1867, affirms this, stating "All bonds issued **prior** to Apr. 27, 1861."

Act of Mar. 30, 1871, provides for scaling the debt, so Sinking Fund cash operations are taken only through 1871.

Total Interest paid by Virginia, from Jan. 1, 1861, to **Dec. 31**, 1871	$7,109,263 93
less interest refunds and adjustments	15,160 32
Net Interest paid	$7,094,103 61

PLAINTIFF'S EXHIBIT No. 1.

VIRGINIA *vs.* WEST VIRGINIA.

SINKING FUND RECEIPTS AND DISBURSEMENTS AND BONDS ISSUED FOR INTEREST.

BONDS ISSUED UNDER ACT OF MARCH 2, 1866—FOR INTEREST.

Copied from Second Auditor's Report of December 1, 1871.

Table B. Page 9.

Statement of the Public Debt issued under Act of March 2, 1866, authorizing the Interest to be funded.

Coupon bonds, dated 1st January, 1866	$1,504,500 00
Registered bonds, dated 1st anuary, 1866	1,646,810 37
Coupon bonds, dated 1st January, 1867	1,758,500 00
Registered bonds, dated 1st January, 1867	1,200,853 23
Sterling bonds, dated 1st January, 1867	466,250 00
	$6,576,913 60
Unfunded interest due 1st January, 1867, fundable in bonds under act approved March 30, 1871	582,761 79
Amount of same	$7,159,675 39

December 1, 1871.

ASA ROGERS,
Second Auditor.

Interest on undivided debt, paid in cash, from January 1, 1861, to December 31, 1871	$ 7,094,103 61
Interest on undivided debt, paid in bonds as above	6,576,913 60
	$13,671,017 21

VIRGINIA vs. WEST VIRGINIA.

PLAINTIFF'S EXHIBIT NO. 1, SUB-SCHEDULE SHOWING INTEREST PAID BY THE SINKING FUND BETWEEN JANUARY 1, 1861, AND APRIL 1, 1865, REDUCED TO GOLD BASIS.

1861.	Paid.	Confederate rate.	Gold Value.
Jan.	$518,054.41	.....	$518,054.41
Feb.	33,733.16	.....	33,733.16
Mar.	8,426.75	.....	8,426.75
Apr.	4,129.20	.....	4,129.20
May	53,186.85	$1.10	
June	1,914.45	1.10	
July	483,140.06	1.10	563,417.99
Aug.	54,688.59	1.10	
Sept.	26,829 84	1.10	
Oct	6,389.88	1.15	
Nov.	59,130.97	1 15	56,974.65
Dec	5,364.00	1.29	4,470.00
1862.			
Jan	487,121.17	1.25	
Feb.	74,064.71	1.25	448,948 70
Mar.	25,757.48	1.30	19,813.45
Apr	5,833.33	1.40	4,166.67
May	10,315.50	1.50	
June	.....		243,400.36
July	287,990.32	1.50	
Aug	66,794.72	1.50	
Sept	187,625 85	2 50	
Oct.	41,184.24	2.50	91,524.04
Nov.	10,900.97	3 00	
Dec.	16,257.34	3.00	150,491.56
1863.			
Jan	424,316.36	3.00	
Feb.	69,311.15	4.00	17,327.79
Mar.	20,651.05	5.00	4,330.21
Apr	26,854.53	5.50	4,882.64
May.	7,445.46	5.75	1,294.86
June 1-19	5,715.32	7.50	762.04
Pl. Ex. No. 1 (P. 286)	$3,023,127.66		$2,176,148.48
Interest refunds (P. 285)	3,400.50		3,400 50
	$3,019,727.16		$2,172,747.98

VIRGINIA vs. WEST VIRGINIA.

INTEREST PAID BY THE SINKING FUND REDUCED TO GOLD BASIS—(continued).

1863.	Paid.	Confederate rate.	Gold Value.
June 20-30	$6,159.04	7.50	$821.21
July	359,928.11	9.00	39,992.02
Aug.	47,454.86	12.50	3,796.39
Sept.	30,845.47	12.50	2,467.63
Oct.	16,952.44	14.00	1,210.88
Nov.	7,698.12	16.00	481.13
Dec.	5,421.86	19.00	285.36
1864.			
Jan.	293,060.72	20.25	14,472.13
Feb.	71,442.57	23.25	3,072.79
Mar.	28,756.65	23.75	1,210.80
Apr.	9,459.70	22.50	420.43
May.	5,623.30	19.50	288.37
June	2,491.50	18.00	138.42
July.	237,919.35	21.50	11,066.01
Aug.	51,236.75	23.75	2,157.34
Sept.	32,004.76	25.00	1,280.19
Oct.	14,620.77	26.50	551.73
Nov.	11,952.07	30.50	391.87
Dec.	5,691.42	41.50	137.14
1865.			
Jan.	215,340.47	52.50	4,101.72
Feb.	41,364.43	55.00	752.08
Mar.	8,533.52	65.00	131.29
Pl. Ex. No. 1 (P. 286)	$1,503,957.88		$89,226.93
Interest refunds (P. 285)	4,620.00	7.50	616.00
	$1,499,337.88		$88,610.93

SUMMARY.

Jan. 1—1861 to June 20–1863	$3,019,727.16	$2,172,747.98
June 20–1863 to Apr. 1–1865	1,499,337.88	88,610.93
	$4,519,065.04	$2,261,358.91

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 1.

Showing all bonds issued between January 7, 1861 and March 31, 1865. Also payments on account of pre-esixting liabilities during the same period.

Loan No. 90—Board of Public Works Ledger, page 252—		
Registered	$ 457,580 02	
Coupons	625,000 00	
		$1,082,580 02
Loan No. 91—Board of Public Works Ledger, page 252		2,900 00
Loan No. 93—Board of Public Works Ledger, page 252	293,670 00	
Loan No. 93—Board of Public Works Ledger, page 254	130,000 00	
		423,670 00
		$1,509,150 02
Payments on account of Internal Improvements, as per Sub. Schedule I		$1,008,160 38
State Bonds exchanged for old James River and Kanawha Company Bonds, guaranteed by the State, Journal D, page 112	$140,570 00	
Journal D, page 167	130,000 00	
		$ 270,570 00
Payments on account of Interest on guaranteed Bonds, January 1, 1861, to 1865—		
of James River and Kanawha Co. (Sub. Schedule II.)		77,691 63
of Chesapeake & Ohio Canal Co. (Sub. Schedule II.)		46,335 00
Payments on account of Interest to the Literary Fund and Dawson Fund on State Bonds held by those funds, and not paid by the Sinking Fund, January, 1861, to 1865 (Sub. Schedule III.)		184,989 20
Payments on account of Dividends on Old James River Company Stock (Sub. Schedule IV.)		48,735 00
		$1,636,481 21

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 1.

(*Continued.*)

Sub-schedule 1.

PAYMENTS ON ACCOUNT OF INTERNAL IMPROVEMENTS.

Internal Improvement Ledger B.

Name of Company.	Page.	Amount.
Alexandria, Loudon & Hampshire Railroad Co.—Stock..	181	$ 24,000 00
Back Creek Valley Turnpike Company—Stock.....	269	24,000 00
Covington & Ohio Railroad Company—Construction....	188	419,333 50
Danville & Wytheville Turnpike Company—Stock.....	201	2,350 50
Elk River Turnpike Company—Surveying.....	229	116 00
Franklin & Monterey Turnpike Company—Construction.	231	305 91
Fredericksburg & Gordonsville Railroad Co.—Stock....	181	30,900 00
Fredericksburg & Valley Turnpike Co.—Stock.....	195	315 00
Hedgesville & Potomac Turnpike Co.—Stock.....	204	600 00
Jacksonville & Christiansburg Turnpike Co.—Stock...	205	980 50
Letart Falls & West Columbia Turnpike Co.—Stock....	225	600 00
Kingwood & West Union Turnpike Co.—Macadamizing..	222	7,173 04
Manassas Gap Railroad Co.—Stock.....	182	175,000 00
Middlefork Road—Bridge Construction.....	237	600 00
Norfolk & Petersburg Railroad Co.—Stock.....	182	60,000 00
Raleigh & Wythe Line Turnpike Co.—Stock.....	269	2,400 00
Rivanna Navigation Co.—Stock.....	193	42,000 00
Russell Old Courthouse & Abingdon Turnpike Co.—Stock	223	600 00
Slavins Cabin & Summerville Turnpike Co.—Construction	236	49 75
Southwestern Turnpike Road—Construction.....	236	5,201 42
Staunton & Parkersburg Road—Macadamizing.....	235	17 50
Virginia Central Railroad Company—Stock.....	185	86,604 95
Virginia Central Railroad Company—Loans.....	241	120,000 00
Virginia & Kentucky Railroad Co.—Stock.....	186	21,438 08
Walker's Creek & Holston Turnpike Co.—Stock.....	220	2,109 23
Wilson's Creek and South Fork Turnpike Co.—Stock...	221	4,325 00
		$1,008,160 38

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 1.

(Continued.)

Sub-schedule II.

PAYMENTS ON ACCOUNT OF INTEREST ON GUARANTEED BONDS.

Internal Improvement Journal D.

Page.	Due.	James River & Kanawha Company.	Chesapeake & Ohio Canal Co.
96	Quarter ended March 31, 1861	$	$14,820 00
96	Quarter ended March 31, 1861	16,354 65	
104	Quarter ended June 30, 1861		120 00
104	Quarter ended June 30, 1861	170 70	
112	Quarter ended September 30, 1861	9,210 90	
125	Six months ended March 31, 1862	9,973 68	
134	Six months ended September 30, 1862	6,893 40	
134	Six months ended September 30, 1862		14,985 00
144	Six months ended March 31, 1863	7,977 54	
145	Six months ended March 31, 1863		9,945 00
154	Six months ended September 30, 1863	9,635 04	
154	Six months ended September 30, 1863		4,455 00
164	Year ended September 30, 1864	12,989 22	
164	Year ended September 30, 1864		2,010 00
169	Six months ended March 31, 1865	4,486 50	
		$77,691 63	$46,335 00

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 1.

(Continued.)

Sub-schedule III.

PAYMENTS ON INTEREST ON PUBLIC DEBT TO LITERARY FUND.

Internal Improvement Fund, Journal D.

March 29, 1861—Page 94—On $634,367.33 of 6%, $155,200.00 of 5%, six months ended Jan. 1, 1861	$ 22,911 02	
March 29, 1861—Page 94—On Dawson Fund o f$6,350.00; six months ended Jan. 1, 1861		190 50
March 29, 1861—Page 94—On Nelson County of $737.61; six months ended Jan. 1, 1861		22 13
September 11, 1861—Page 111—On $634,367.33 and $155,200.00; six months ended July 1, 1861	22,911 02	
September 11, 1861—Page 111—On Dawson Fund in trust, $6,350.00; six months ended July 1, 1861		190 50
September 11, 1861—Page 111—On Nelson County in trust, $737.81; six months ended July 1, 1861		22 13
March 31, 1862—Page 123—Same; six months ended July 1, 1862	22,911 02	
March 31, 1862—Page 123—Dawson Fund; six months ended Jan. 1, 1862		190 50
March 31, 1862—Page 123—Nelson County; six months ended Jan. 1, 1862		22 13
August 5, 1862—Page 132—Same; six months ended July 1, 1862	22,911 02	
August 5, 1862—Page 132—Dawson Fund; six months ended July 1, 1862		190 50
August 5, 1862—Page 132—Nelson County; six months ended July 1, 1862		22 13
Feb. 4, 1863—Page 141—Same; six months ended Jan. 1, 1863	22,911 02	
Feb. 4, 1863—Page 141—Dawson Fund; six months ended Jan. 1, 1863		190 50
Feb. 4, 1863—Page 141—Nelson County; six months ended Jan. 1, 1863		22 13
August 26, 1863—Page 152—Same; stix months ended July 1, 1863	22,911 02	
August 26, 1863—Page 152..Dawson Fund; six months ended July 1, 1863		190 50
August 26, 1863—Page 152—Nelson County; six months ended July 1, 1863		22 13
March 24, 1864—Page 160—Same; six months ended Jan. 1, 1864	22,911 02	
March 24, 1864—Page 160—Dawson Fund; six months ended Jan. 1, 1864		190 50

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 1.

(Continued.)

Sub-schedule III.

PAYMENTS OF INTEREST ON PUBLIC DEBT TO LITERARY FUND.

Internal Improvement Fund, Journal D.

March 24, 1864—Page 160—Nelson County; six months ended Jan. 1, 1864	22 13
September 2, 1864—Page 161—Same; six months ended July 1, 1864	22,911 02
September 2, 1864—Page 161—Nelson County; six months ended July 1, 1864	22 13
September 2, 1864—Page 161—Dawson Fund; six months ended July 1, 1864	190 50
	$184,989 20

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 1.

(*Continued.*)

Sub-schedule IV.

PAYMENTS ON ACCOUNT OF DIVIDENDS ON OLD JAMES RIVER COMPANY STOCK.

Internal Improvement Fund, Journal D.

Page.		
94	Washington College, January 3, 1861	$ 1,440 00
94	Sundries, January 1, 1861	1,380 00
94	Washington College, March 29, 1861	60 00
94	Literary Fund, March 29, 1861	3,375 00
94	Sundries, March, 1861	30 00
110	Washington College, July 2, 1861	1,440 00
111	Washington College, September 11, 1861	60 00
110 & 111	Sundries—July, 1861	900 00
111	Sundries, August, 1861	135 00
111	Literary Fund, September 11, 1861	3,375 00
123	Washington College, January 6, 1862	1,440 00
123	Washington College, March 31, 1862	60 00
123	Literary Fund, March 31, 1862	3,375 00
123	Sundries, January, 1862	900 00
122 & 123	Sundries, February, 1862	60 00
131	Washington College, July 26, 1862	1,440 00
131	Washington College, August 5, 1862	60 00
131	Literary Fund, August 5, 1862	3,375 00
130 & 131	Sundries, July and August, 1862	630 00
142	William & Mary College, October 15, 1862	330 00
142	Washington College, January 7, 1863	1,440 00
142	Washington College, February 4, 1863	60 00
142	Literary Fund, February 4, 1863	3,375 00
142	Sundries, October, 1862; January and February, 1863	1,230 00
151	Washington College, July 2, 1863	1,440 00
151	Washington College, August 26, 1863	60 00
151	Literary Fund, August 26, 1863	3,375 00
151	Sundries, Quarter ended August, 1863	840 00
154	Sundries, April 29, 1863	45 00
160	Washington College, January 7, 1864	1,440 00
160	Washington College, March 24, 1864	60 00
160	Literary Fund, March 24, 1864	3,375 00

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 1.

Continued.

Sub-schedule IV.

PAYMENTS ON ACCOUNT OF DIVIDENDS ON OLD JAMES RIVER COMPANY STOCK.

Internal Improvement Fund, Journal D.

160—Sundries, Nov., 1863; Jan., Mar., July, Aug. & Sept., 1864.	1,500 00
160—Washington College, July 12, 1864	1,440 00
160—Washington College September 2, 1864	60 00
160—Literary Fund, September 2, 1864	3,375 00
163—Sundries, October 26, 1863	30 00
168—Sundries, Dec., 1864; Jan., 1865	285 00
168—Washington College, January 12, 1865	1,440 00
	$48,735 00

PLAINTIFF'S SUPPLEMENTAL EXHIBIT No. 1 A.

(To be attached to and printed with Plaintiff's Exhibit No. 1.

Showing the Total Cost to Virginia of the Bands issued for Interest under the Act of March 2, 1866, under various funding acts.

Bonds issued by Virginia under the act of March 2, 1866, as shown in her Second Auditor's report of December 1, 1871, Table B ,page 9			$ 6,576,913 60
Of which there appears to be—			
of 5% bonds	$ 16,753 50	—.0025%	
and of 6% bonds	6,560,160 10	—.9975%	
Interest thereon from January 1, 1866, to July 1, 1871:			
5½ years at 5% on	16,753 50	4,607 21	
5½ years at 6% on	6,560,160 10	2,164,852 83	
			2,169,460 04
			$ 8,746,373 64
Two-thirds of which is (Consols, per act March 30, 1871			$ 5,830,915 76
Interest from July 1, 1871, to January 1, 1879:			
.0025% of $5,830,915.76—	$ 14,577 29		
.9975% of $5,830,915.76—	5,816,338 47		
$14,577.29 at 5% for 7½ years	$ 5,466 48		
$5,816,338.47 at 6% for 7½ years	2,617,352 31		
			2,622,818 79
			$ 8,453,734 55

PLAINTIFF'S SUPPLEMENTAL EXHIBIT No. 1 A.

(*Continued*)

Showing the Total Cost to Virginia of the Bonds issued for Interest under the Act of March 2, 1866, under various funding acts.

Under act of March 28, 1879, these bonds and interest were fundable, as follows:

100% of principal of bonds in new bonds bearing interest at 3% for 10 years, 4% for 20 years, 5% for 10 years....	$ 5,830,915 76
50% of interest (due and unpaid) in new bonds bearing interest the same as above.....	1,311,409 40
(10-40's)	$ 7,142,325 16
Interest on $7,142,325.16 at 3% from January 1, 1879, to July 1, 1882 (3½ years).....	749,944 14
	$ 7,892,269 30
Under act of February 14, 1882, these bonds fall in Class B, fundable in new 3% bands at 60%.....	$ 4,285,395 10
Interest at 100%.....	749,944 14
	$ 5,035,339 24
Interest on same, July 1, 1882, to October 1, 1914, 32¼ years at 3%—96¾%.....	4,871,690 71
	$ 9,907,029 95

PLAINTIFF'S SUPPLEMENTAL EXHIBIT No. 1 A.

(Continued.)

Showing the Total Cost to Virginia of the Bonds issued for Interest under the Act of March 2, 1866, under various funding acts.

The foregoing computation is made on the assumption that the bonds of 1866 were scaled by the acts of 1871 and 1879 and 1882, which were the most drastic of the Virginia scaling acts. If the bonds were scaled under the acts of 1871, 1879 and 1892, the result would be as follows:

Principal as above at January 1, 1879		$ 7,142,325 16
Interest from January 1, 1879, to July 1, 1891, 12½ years:		
at 3% for 10 years	30%	
at 4% for 2½ years	10%	
	40%	2,856,930 06
		$ 9,999,255 22
19-28ths of which is (per act of February 20, 1892), (century)		6,785,209 14
Interest from July 1, 1891, to October 1, 1914:		
10 years at 2%	20%	
13¼ years at 3%	39¾%	
	59¾%	4,054,162 46
		$10,839,371 60

If, on the other hand, the bonds were not scaled under the act of 1879, which was a refunding act of comparatively minor importance, on the basis of the 1881-2 settlement, the result would be as follows:

Principal, as above, in 1871		$ 5,830,915 76
Interest from July 1, 1871, to July 1, 1882:		
$ 14,577.29 at 5% for 11 years	$ 8,017 51	
$5,816,338.47 at 6% for 11 years	3,838,783 39	
		3,846,800 90
		$ 9,677,716 66

PLAINTIFF'S SUPPLEMENTAL EXHIBIT No. 1 A.

(Continued.)

Showing the Total Cost to Virginia of the Bonds issued for Interest under the Act of March 2, 1866, under various funding acts.

Scaled under act of 1882:		
Principal at 53%.....	$3,090,385 35	
Interest at 100%.....	3,846,800 90	
		$ 6,937,186 25
Interest from July 1, 1882, to October 1, 1914:		
3% for 32¼ years, or 96¾%.....		6,711,727 70
		$13,648,913 95
On the basis of the 1871 and 1892 settlements the result would be as follows:		
Principal as above in 1871.....		$ 5,830,915 76
Interest from July 1, 1871, to July 1, 1891:		
$ 14,577.29 at 5% for 20 years. .....$	14,577 29	
$5,816,338.47 at 6% for 20 years.....	6,979,606 16	
		6,994,183 45
		$12,825,099 21
19-28ths of which is (per act of February 20, 1892).....		$ 8,702,745 89
Interest from July 1, 1891, to October 1 1914—23¼ years:		
10 years at2%.....20 %		
13¼ years at 3%.....39¾%		
	59¾%	5,199,890 67
		$13,902,636 56

The foregoing computations are on the basis that no interest was paid upon the bonds issued under the acts of 1866 1871 and 1879, except in refunding.

If such interest had in fact been paid when due, it would increase the amounts given above, because the act of 1879 scaled interest 50% and the act of 1892 scaled both interest and principal by 9-28ths of their sum total. If interest had actually been paid, it would have been paid according to the bonds, and not according to the subsequent scale.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.		Bid.	Asked.	
1863	Dec. 11. Va. 6's Reg.	240	247 & Int.	Richmond Dispatch, Richmond Exchange.
	Dec. 11. Va. 6's Reg., past due	215		Richmond Dispatch, Richmond Exchange.
	Dec. 12. Va. 6's	54		New York Times, New York Exchange.
	Dec. 18. Va. 6's Reg., long dates	235	250	Richmond Dispatch, Richmond Exchange.
	Dec. 18. Va. 6's Reg., past due	203		Richmond Dispatch, Richmond Exchange.
	Dec. 19. Va. 6's	49		New York Times, New York Exchange.
	Dec. 24. Va. 6's	49		New York Times, New York Exchange.
	Dec. 25. Va. 6's Reg., long dates	235	250	Richmond Dispatch, Richmond Exchange.
1867	Nov. 5. Va. 6's Reg., old	38¾	39	Baltimore Gazette, Baltimore Exchange.
	Nov. 18. Va. 6's Coupons, new	44¾		Baltimore Gazette, Baltimore Exchange.
	Oct. 18 Va. 6's, New	45	45½	Baltimore Gazette, Baltimore Exchange.
	July 24. Va. 6's, new	51		Richmond Dispatch, New York Exchange.
	July 24. Va. 6's, new	41⅞	42	Baltimore Gazette, Baltimore Exchange.
	Sept. 6. Va. 6's, Ex. Coupons	49		Richmond Dispatch, New York Exchange.
	Sept. 6. Va. 6's, Ex. Coupons, New.	48		Richmond Dispatch, New York Exchange.
	Nov. 28. Va. 6's, New	40	43	Baltimore Gazette, Baltimore Exchange.
	Dec. 23. Va. 6's	37½	37⅞	Baltimore Gazette, Baltimore Exchange.
1868	June 29. Va. 6's, Coupons	53¼		Richmond Dispatch, New York Exchange.
	June 29. Va. 6's, New	53		Richmond Dispatch, New York Exchange.
	July 25. Va. 6's, New	53		Richmond Dispatch, Baltimore Exchange.
	July 27. Va. 6's, old inscribed	45	45½	Richmond Dispatch, Baltimore Exchange.
	July 27. Va. 6's, old coupons	55¼		Richmond Dispatch, Baltimore Exchange.
	Aug. 29. Va. 6's, Coupons	53¼		Richmond Dispatch, New York Exchange, Aug. 29.
	Aug. 29. Va. 6's, New	53		Richmond Dispatch, New York Exchange.
	Aug. 29. Va. 6's, Old inscribed	47	48	Richmond Dispatch, Baltimore Exchange.
	Aug. 29. Va. 6's	47	50	Richmond Dispatch, Baltimore Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.		Bid.	Asked.	
1869 Jan.	2. Va. 6's, Ex. Coupons.....	55		Richmond Dispatch, New York Exchange.
1870 Mar.	30. Va. 6's, Old.....	70		Richmond Dispatch, New York Exchange, Mar. 29.
Mar.	30. Va. 6's, New.....	70¼		Richmond Dispatch, New York Exchange, Mar. 29.
Mar.	30. Va. 6's, Old.....	70½		Richmond Dispatch, New York Exchange, Mar. 29.
Mar.	30. Va. 6's, New.....	70½		Richmond Dispatch, New York Exchange, Mar. 29.
Mar.	30. Va. 6's, Old.....	56½	57	Richmond Dispatch, Baltimore Exchange, Mar. 29.
Mar.	30. Va. 66's.....	62	67	Richmond Dispatch, Baltimore Exchange, Mar. 29.
Mar.	30. Va. 67's.....		60	Richmond Dispatch, Baltimore Exchange, Mar. 29.
Mar.	31. Va. 6's, Ex. Coupons.....	71⅛		Richmond Dispatch, New York Exchange, Mar. 30.
Mar.	31. Va. 6's, New.....	68		Richmond Dispatch, New York Exchange, Mar. 30.
Mar.	31. Va. 6's, Old.....	71		Richmond Dispatch, New York Exchange, Mar. 30.
Mar.	31. Va. 6's, New.....	71		Richmond Dispatch, New York Exchange, Mar. 30.
Mar.	31. Va. 6's, Old.....	58	59	Richmond Dispatch, Baltimore Exchange, Mar. 30.
Mar.	31. Va. 66's.....	66		Richmond Dispatch, Baltimore Exchange, Mar. 30.
Mar.	31. Va. 67's.....	60½	60¾	Richmond Dispatch, Baltimore Exchange, Mar. 30.
Apr.	1. Va. 6's, Old.....	70		Richmond Dispatch, New York Exchange, Mar. 31.
Apr.	1. Va. 6's, New.....	70		Richmond Dispatch, New York Exchange, Mar. 31.
Apr.	1. Va. 6's, Old.....	58¼		Richmond Dispatch, Baltimore Exchange, Mar. 31.
Apr.	2. Va. 6's, Ex. Coupons.....	70		Richmond Dispatch, New York Exchange, Apr. 1.
Apr.	2. Va. 6's, New.....	70½		Richmond Dispatch, New York Exchange, Apr. 1.
Apr.	2. Va. 6's, Old.....	70¼	70½	Richmond Dispatch, New York Exchange, Apr. 1.
Apr.	2. Va. 6's New.....	69½	70¾	Richmond Dispatch, New York Exchange, Apr. 1.
June	28. Va. 6's, Ex. Coupons.....	70		Richmond Dispatch, New York Exchange.
June	28. Va. 6's, New.....	68		Richmond Dispatch, New York Exchange.
June	29. Va. 6's, Ex. Coupons.....		70	Richmond Dispatch, New York Exchange.
June	29. Va. 6's. New.....		69¾	Richmond Dispatch, New York Exchange.
June	30. Va. 6's, in old.....	54¾	55¼	Baltimore Gazette, Baltimore Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers
In Virginia State Library Used In Class "C."

Date.		Bid.	Asked.	
1870	June 30. Va. 1866	65	65½	Baltimore Gazette, Baltimore Exchange.
	June 30. Va. 1867	62	62¾	Baltimore Gazette, Baltimore Exchange.
	June 30. Va. Coupon, old	...	...	Baltimore Gazette, Baltimore Exchange.
	June 30. Va. Coupon, New	...	...	Baltimore Gazette, Baltimore Exchange.
	Dec. 16. Va. 6's, New	63		Richmond Dispatch, New York Exchange.
	Dec. 16. Va. 6's, Old	65½		Richmond Dispatch, New York Exchange.
	Dec. 13. Va. 6's, Old	65		Richmond Dispatch, New York Exchange, Dec. 12.
	Dec. 13. Va. 6's, New	63½		Richmond Dispatch, New York Exchange, Dec. 12.
	Dec. 13. Va. 6's, Old	51⅝	52½	Richmond Dispatch, Baltimore Exchange, Dec. 12.
	Dec. 13. Va. 1866		64	Richmond Dispatch, Baltimore Exchange, Dec. 12.
	Dec. 13. Va. 1867		60	Richmond Dispatch, Baltimore Exchange, Dec. 12.
	Dec. 13. Va. 6's, Coupons, Old		59	Richmond Dispatch, Baltimore Exchange, Dec. 12.
	Dec. 14. Va. 6's, Old	65½		Richmond Dispatch, New York Exchange, Dec. 13.
	Dec. 14. Va. 6's, New	63		Richmond Dispatch, New York Exchange, Dec. 13.
	Dec. 14. Va. 6's, Old	51¼	51⅞	Richmond Dispatch, Baltimore Exchange, Dec. 13.
	Dec. 14. Va. 1867	57	58	Richmond Dispatch, Baltimore Exchange, Dec. 13.
	Dec. 15. Va. 6's, Old	65		Richmond Dispatch, New York Exchange, Dec. 14.
	Dec. 15. Va. 6's, New	62½		Richmond Dispatch, New York Exchange, Dec. 14.
	Dec. 15. Va. 6's, Old	50½	51⅞	Richmond Dispatch, Baltimore Exchange, Dec. 14.
	Dec. 15. Va. 6's, 1867	56½	57	Richmond Dispatch, Baltimore Exchange, Dec. 14.
	Dec. 15. Va. Coupons		70	Richmond Dispatch, Baltimore Exchange, Dec. 14.
	Dec. 16. Va. 6's, Old	50		Richmond Dispatch, Baltimore Exchange, Dec 14.
1871	Feb. 4. Va. 6's, Old	64		Richmond Dispatch, New York Exchange.
	Feb. 4. Va. 6's, New	60		Richmond Dispatch, New York Exchange.
	Mar. 18. Va. 6's, Old	67		Richmond Dispatch, New York Exchange.
	Mar. 18. Va. 6's, New	67		Richmond Dispatch, New York Exchange,
	Mar. 30. Va. 6's, Old	67¾		Richmond Dispatch, New York Exchange, Mar. 29.

PLAINTIFF'S EXHIBIT No. 2.

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Unless otherwise indicated, all quotations on this page from the Richmond Dispatch are Richmond Stock Exchange and those from the New York Times are New York Exchange.

Date.					Bid.	Asked.	
1860 Nov.	2.	Va.	6's	Reg.....	89		Richmond Dispatch.
Nov.	9.	Va.	6's	Reg.....	88		Richmond Dispatch.
Nov.	16.	Va.	6's	Reg.....	88		Richmond Dispatch.
Nov.	23.	Va.	6's	Reg.....	80		Richmond Dispatch.
Nov.	30.	Va.	6's	Reg.....	86		Richmond Dispatch.
Dec.	7.	Va.	6's	Reg.....	84		Richmond Dispatch.
Dec.	14.	Va.	6's	Reg.....	82½	84	Richmond Dispatch.
1861 Jan.	4.	Va.	6's	Reg.....	80		Richmond Dispatch.
Jan.	11.	Va.	6's	Reg.....	78	80	Richmond Dispatch.
Jan.	18.	Va.	6's	Reg.....	78½	80	Richmond Dispatch.
Jan.	25.	Va.	6's	Reg.....	81		Richmond Dispatch.
Feb.	1.	Va.	6's	Reg.....	81		Richmond Dispatch.
Feb.	8.	Va.	6's	Reg.....	79		Richmond Dispatch.
Feb.	15.	Va.	6's	Reg.....	81		Richmond Dispatch.
Feb.	22.	Va.	6's	Reg.....	81		Richmond Dispatch.
Mar.	1.	Va.	6's	Reg.....	82		Richmond Dispatch.
1863 Jan.	3.	Va.	6's	Reg.....	110		Richmond Dispatch.
Jan.	4.	Va.	6's	Reg.....	62		New York Times.
Jan.	5.	Va.	6's	Reg.....	62		New York Times.
Jan.	6.	Va.	6's	Reg.....	62½		New York Times.
Jan.	7.	Va.	6's	.....	110		Richmond Dispatch.
Jan.	20.	Va.	6's	.....	65		New York Times.
Jan.	21.	Va.	6's	.....	110		Richmond Dispatch.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.		Bid.	Asked.	
1863 Jan. 22.	Va. 6's Reg.	68		New York Times.
Jan. 29.	Va. 6's Reg.	110		Richmond Dispatch.
Feb. 7.	Va. 6's Reg.	108		Richmond Dispatch.
Feb. 14.	Va. 6's	108		Richmond Dispatch.
Feb. 18.	Va. 6's	106½		Richmond Dispatch.
Feb. 21.	Va. 6's Reg.	106		Richmond Dispatch.
Feb. 25.	Va. 6's Reg.	106		Richmond Dispatch.
Mar. 14.	Va. 6's Reg.	106		Richmond Dispatch.
Mar. 12.	Va. 6's	67		New York Times.
Mar. 16.	Va. 6's	66		New York Times.
Mar. 17.	Va. 6's	108		Richmond Dispatch.
Mar. 25.	Va. 6's Reg.	112		Richmond Dispatch.
1863 Apr. 9.	Va. 6's Reg.	63		New York Times, New York Exchange.
Apr. 20.	Va. 6's	64		New York Times, New York Exchange.
Apr. 22.	Va. 6's	112		Richmond Dispatch, Richmond Exchange.
Apr. 29.	Va. 6's Reg.	112 & Int.		Richmond Dispatch, Richmond Exchange.
May 2.	Va. 6's Reg.	111¼	111½	Richmond Dispatch, Richmond Exchange.
May 16.	Va. 6's	112		Richmond Dispatch, Richmond Exchange.
May 20.	Va. 6's Reg.	112 & Int.		Richmond Dispatch, Richmond Exchange.
May 20.	Va. 6's	68		New York Times, New York Exchange.
May 26.	Va. 6's	66		New York Times, New York Exchange.
May 22.	Va. 6's Reg.	112 & Int.		Richmond Dispatch, Richmond Exchange.
May 27.	Va. 6's Reg.	112 & Int.		Richmond Dispatch, Richmond Exchange.
May 28.	Va. 6's Reg.	112 & Int.		Richmond Dispatch, Richmond Exchange.
June 5.	Va. 6's Reg.	113 & Int.		Richmond Dispatch, Richmond Exchange.
June 5.	Va. 6's	66½		New York Times, New York Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.		Bid.	Asked.	
1863	June 10. Va. 6's Reg.	115	& Int.	Richmond Dispatch, Richmond Exchange.
	June 12. Va. 6's Reg.	115	& Int.	Richmond Dispatch, Richmond Exchange.
	June 16. Va. 6's Reg., long dates	130½		Richmond Dispatch, Richmond Exchange.
	June 25. Va. 6's Reg.	66½		New York Times, New York Exchange.
	June 27. Va. 6's Reg.	131	& Int.	Richmond Dispatch, Richmond Exchange.
	June 30. Va. 6's Reg.	131		Richmond Dispatch, Richmond Exchange.
	July 15. Va. 6's Reg.	61		New York Times, New York Exchange.
	July 17. Va. 6's Reg.	135		Richmond Dispatch, Richmond Exchange.
	July 22. Va. Coupons—4 coup. on	325		Richmond Dispatch, Richmond Exchange.
	July 22. Va. 6's Reg.	160		Richmond Dispatch, Richmond Exchange.
	July 24. Va. 6's	61		New York Times, New York Exchange.
	July 24. Va. 6's Reg.	175		Richmond Dispatch, Richmond Exchange.
	July 24. Va. Interest paying	285		Richmond Dispatch, Richmond Exchange.
	July 27. Va. 6's	61		New York Times, New York Exchange.
	July 28. Va. 6's	61½		New York Times, New York Exchange.
	July 29. Va. 6's Reg.	176		Richmond Dispatch, Richmond Exchange.
	July 30. Va. 6's	61½		New York Times, New York Exchange.
	Aug. 11. Va. 6's	61		New York Times, New York Exchange.
	Aug. 12. Va. 6's Reg.	209½		Richmond Dispatch, Richmond Exchange.
	Aug. 27. Va. 6's Reg.	210		Richmond Dispatch, Richmond Exchange.
	Aug. 27. Va. 6's	62		New York Times, New York Exchange.
	Sept. 1. Va. 6's Reg.	210		Richmond Dispatch, Richmond Exchange.
	Sept. 1. Va. 6's	60		New York Times, New York Exchange.
	Sept. 3. Va. 6's, 1868	180		Richmond Dispatch, Richmond Exchange.
	Sept. 3. Va. 6's, 1896	186		Richmond Dispatch, Richmond Exchange.
	Sept. 17. Va. 6's Reg., long dates	180		Richmond Dispatch, Richmond Exchange.
	Sept. 17. Va. Coupon Bonds	425		Richmond Dispatch, Richmond Exchange.
	Sept. 23. Va. 6's	58½		New York Times, New York Exchange.
	Sept. 28. Va. 6's	60½		New York Times, New York Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.		Bid.	Asked.	
1863 Oct.	1. Va. 6's Reg., long dates....	185	187½	Richmond Dispatch, Richmond Exchange.
Oct.	1. Va. Coupon Bonds.....	425		Richmond Dispatch, Richmond Exchange.
Oct.	6. Va. 6's.....	68½		New York Times, New York Exchange.
Oct.	21. Va. 6's.....	59¾		New York Times, New York Exchange.
Oct.	23. Va. 6's.....	57		New York Times, New York Exchange.
Oct.	23. Va. 6's Reg., long dates....	200		Richmond Dispatch, Richmond Exchange.
Oct.	23. Va. 6's Reg., overdue.....	172		Richmond Dispatch, Richmond Exchange.
Oct.	23. Va. 6's Coupon Bonds.....	420	425	Richmond Dispatch, Richmond Exchange.
1863 Oct.	30. Va. 6's.....	206		Richmond Dispatch, Richmond Exchange.
Nov.	6. Va. 6's.....	206		Richmond Dispatch, Richmond Exchange.
Nov.	6. Va. 6's.....	55		New York Times, New York Exchange.
Nov.	13. Va. 6's Reg., long dates....	239		Richmond Dispatch, Richmond Exchange.
Nov.	13. Va. 6's.....	54		New York Times, New York Exchange.
Nov.	13. Va. 6's Reg., overdue.....	205		Richmond Dispatch, Richmond Exchange.
Nov.	13. Va. 6's Coupons with interest	430		Richmond Dispatch, Richmond Exchange.
Nov.	13. Va. 6's Cous., without int..	410		Richmond Dispatch, Richmond Exchange.
Nov.	20. Va. 6's Reg., 1891-94.....	253		Richmond Dispatch, Richmond Exchange.
Nov.	20. Va. 6's Reg., 1890.....	255		Richmond Dispatch, Richmond Exchange.
Nov.	20. Va. 6's Reg.....	257		Richmond Dispatch, Richmond Exchange.
Nov.	20. Va. 6's Reg., past due.....	197	198	Richmond Dispatch, Richmond Exchange.
Nov.	20. Va. 6's.....	53		New York Times, New York Exchange.
Nov.	27. Va. Coupon Bonds.....	446	448	Richmond Dispatch, Richmond Exchange.
Nov.	27. Va. 6's Reg.....	250	257	Richmond Dispatch, Richmond Exchange.
Nov.	30. Va. 6's.....	55		New York Times, New York Exchange.
Dec.	3. Va. 6's.....	55		New York Times, New York Exchange.
Dec.	4. Va. 6's Reg.....	225 & Int.		Richmond Dispatch, Richmond Exchange.
Dec.	4. Va. Coupon Bonds.....	475		Richmond Dispatch, Richmond Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.			Bid.	Asked.	
1871	Mar. 30.	Va. 6's, New	72½		Richmond Dispatch, New York Exchange, Mar. 29.
	Mar. 30.	Va. 6's, Old	53⅞	55	Richmond Dispatch, Baltimore Exchange, Mar. 29.
	Mar. 30.	Va. 66's	70	72	Richmond Dispatch, Baltimore Exchange, Mar. 29.
	Mar. 30.	Va. 67's	65	66½	Richmond Dispatch, Baltimore Exchange, Mar. 29.
	Mar. 31.	Va. 6's, Old	70½		Richmond Dispatch, New York Exchange, Mar. 30.
	Mar. 31.	Va. 6's, New	71		Richmond Dispatch, New York Exchange, Mar. 30.
	Mar. 31.	Va. 6's, Old	55½	55⅞	Richmond Dispatch, Baltimore Exchange, Mar. 30.
	Mar. 31.	Va. 66's	70	70¾	Richmond Dispatch, Baltimore Exchange, Mar. 30.
	Mar. 31.	Va. 67's	65		Richmond Dispatch, Baltimore Exchange, Mar. 30.
	Mar. 31.	Va. Coupons, Old	69	70	Richmond Dispatch, Baltimore Exchange, Mar. 30.
	Mar. 31.	Va. Coupons, New	70	71	Richmond Dispatch, Baltimore Exchange, Mar. 30.
	Apr. 1.	Va. 6's, Old	73½		Richmond Dispatch, New York Exchange, Mar. 31.
	Apr. 1.	Va. 6's, New	71¼		Richmond Dispatch, New York Exchange.
	Apr. 3.	Va. 6's, Old	73		Richmond Dispatch, New York Exchange, Apr. 1.
	Apr. 3.	Va. 6's, New	73		Richmond Dispatch, New York Exchange, Apr. 1.
	Apr. 14.	Va. 6's, Old	70		Richmond Dispatch, New York Exchange.
	Apr. 14.	Va. 6's, New	72		Richmond Dispatch, New York Exchange.
	May 18.	Va. 6's, Old	68		Richmond Dispatch, New York Exchange.
	May 18.	Va. 6's, New	72		Richmond Dispatch, New York Exchange.
	June 22.	Va. 6's, Old	67		Richmond Dispatch, New York Exchange.
	June 22.	Va. 6's, New	72½		Richmond Dispatch, New York Exchange.
	Aug. 31.	Va. 6's, Old	62		Richmond Dispatch, New York Exchange.
	Aug. 31.	Va. 6's, New	70		Richmond Dispatch, New York Exchange.
	Sept. 7.	Va. 6's, Old	60¼		Richmond Dispatch, New York Exchange.
	Sept. 7.	Va. 6's, New	70		Richmond Dispatch, New York Exchange.
	Oct. 6.	Va. 6's, Old	61½		Richmond Dispatch, New York Exchange.
	Oct. 6.	Va. 6's, New	68		Richmond Dispatch, New York Exchange.
	Dec. 29.	Va. 6's, Old	56		Richmond Dispatch, New York Exchange.
	Dec. 29.	Va. 6's, New	55½		Richmond Dispatch, New York Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.		Bid.	Asked.	
1872 Mar. 27.	Va. 6's, Old	54½		Richmond Dispatch, New York Exchange.
Mar. 27.	Va. 6's, New	55		Richmond Dispatch, New York Exchange.
Mar. 28.	Va. 6's, Old	55		Richmond Dispatch, New York Exchange.
Mar. 28.	Va. 6's, New	55		Richmond Dispatch, New York Exchange.
June 28.	Va. 6's, Old	43		Richmond Dispatch, New York Exchange.
June 28.	Va. 6's, New	48		Richmond Dispatch, New York Exchange.
Nov. 30.	Va. 6's, Old	48		Richmond Dispatch, New York Exchange.
Nov. 30.	Va. 6's, New	52		Richmond Dispatch, New York Exchange.
Nov. 30.	Va. 6's, Consols	55		Richmond Dispatch, New York Exchange.
1874 Jan. 11.	Va. Consols	51¼		Richmond Dispatch, Richmond Exchange.
Jan. 11.	Va. Consols, New	35¼		Richmond Dispatch, Richmond Exchange.
Jan. 11.	Va. Deferred	11	11⅓	Richmond Dispatch, Richmond Exchange.
Jan. 11.	Interest Certificates	15	20	Richmond Dispatch, Richmond Exchange.
Jan. 11.	Va. Tax Rec. Coup	84	84½	Richmond Dispatch, Richmond Exchange.
Jan. 11.	Va. 6's, Old	30		Richmond Dispatch, Baltimore Exchange.
Jan. 11.	Va. Consolidated	54¼		Richmond Dispatch, Baltimore Exchange.
Jan. 11.	Ex. Coupons	49		Richmond Dispatch, Baltimore Exchange.
Jan. 30.	Va. Consols	53		Richmond Dispatch, Richmond Exchange.
Jan. 30.	Va. Deferred	10¾		Richmond Dispatch, Richmond Exchange.
Jan. 30.	Va. Coupons	76¼		Richmond Dispatch, Richmond Exchange.
Jan. 30.	Va. 6's, Old	40		Richmond Dispatch, Richmond Exchange.
Jan. 30.	Va. Consols	52⅝		Richmond Dispatch, Baltimore Exchange.
July 29.	Va. Consols, New		34	Richmond Dispatch, Richmond Exchange.
July 29.	Interest Cert. (Black Scrip)	30	34	Richmond Dispatch, Richmond Exchange.
July 30.	Va. Consols	52	53	Richmond Dispatch, Richmond Exchange.
July 30.	Va. Deferred	9¾	10¼	Richmond Dispatch, Richmond Exchange.
July 30.	Va. Tax Rec. Coup	80	80½	Richmond Dispatch, Richmond Exchange.
Dec. 4.	Va. Consols	54		Richmond Dispatch, Richmond Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.		Bid.	Asked.	
1874 Dec.	4. Va. Consols, New.....	41	43	Richmond Dispatch, Richmond Exchange.
Dec.	4. Va. Deferred.....	10	11	Richmond Dispatch, Richmond Exchange.
Dec.	4. Va. Tax Rec. Coup.....	91	92	Richmond Dispatch, Richmond Exchange.
Dec.	4. Va. Consols.....	54¾		Richmond Dispatch, Baltimore Exchange.
Dec.	11. Va. 6's, Peelers.....	42		Richmond Dispatch, Baltimore Exchange.
Dec.	11. Va. 6's, Peelers, Old.....	38		Richmond Dispatch, Baltimore Exchange.
1884 Jan.	11. Va. 6's.....	40		Richmond Dispatch, New York Exchange.
Jan.	11. Va. 6's, Consols.....	40		Richmond Dispatch, New York Exchange.
Jan.	11. Va. Deferred.....	8		Richmond Dispatch, New York Exchange.
Jan.	11. Va. 10-40's, J. & J.....	35		Richmond Dispatch, Richmond Exchange.
Jan.	11. Va. Peelers, J. & J.....	42		Richmond Dispatch, Richmond Exchange.
Jan.	11. Va. 3's, New.....	57	57 1-2	Richmond Dispatch, Richmond Exchange.
Jan.	11. Va. Consol tax, rec. coup., 1882	61	61½	Richmond Dispatch, Richmond Exchange.
Jan.	11. Va. tax rec. coup., 1883...	50	55	Richmond Dispatch, Richmond Exchange.
Jan.	11. Va. 10-40 coup., 1882.....	61	62	Richmond Dispatch, Richmond Exchange.
Jan.	11. 10-40s coup., 1883.....	47½	55	Richmond Dispatch, Richmond Exchange.
July	7. Va. 6's.....	30		Richmond Dispatch, New York Exchange.
July	8. Va. 10-40's, 1879.....	33		Richmond Dispatch, Richmond Exchange.
July	8. Va. Consols, 1871.....	33	35	Richmond Dispatch, Richmond Exchange.
July	8. Va. Peelers, 1872.....	37		Richmond Dispatch, Richmond Exchange.
July	8. New 3's, Riddleberger.....	52	52½	Richmond Dispatch, Richmond Exchange.
1884 July	9. Va. 6's.....	30		Richmond Dispatch, New York Exchange.
July	9. Va. Consols.....	32½		Richmond Dispatch, New York Exchange.
Dec.	4. Va. 6's.....	40		Richmond Dispatch, New York Exchange.
Dec.	4. Va. Consols.....	38¼		Richmond Dispatch, New York Exchange.
Dec.	4. Va. 10-40's.....	32½		Richmond Dispatch, Richmond Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia Bonds From Newspapers In Virginia State Library Used In Class "C."

Date.			Bid.	Asked.	
1884 Dec.	4.	Va. Consols	38		Richmond Dispatch, Richmond Exchange.
Dec.	4.	Va. Peelers	39		Richmond Dispatch, Richmond Exchange.
Dec.	4.	Va. New 3's	52¾	53	Richmond Dispatch, Richmond Exchange.
Dec.	4.	Va. Consol tax rec. coup., 1882	53		Richmond Dispatch, Richmond Exchange.
Dec.	4.	Va. Consols, 1883	33½	35	Richmond Dispatch, Richmond Exchange.
Dec.	4.	Va. 10-40's, 1883	52¼		Richmond Dispatch, Richmond Exchange.
87 June	4.	Va. 6's	48		Richmond Dispatch, New York Exchange, June 3.
June	4.	Va. Consols		55	Richmond Dispatch, New York Exchange, June 3.
June	4.	Va. 6's, Consols	50		Richmond Dispatch, Richmond Exchange, June 3.
June	4.	Va. 6's, Peelers	42		Richmond Dispatch, Richmond Exchange, June 3.
June	4.	Va. 3-4-5-10-40's	40		Richmond Dispatch, Richmond Exchange, June 3.
June	4.	Va. 3's, New	65	65¼	Richmond Dispatch, Richmond Exchange, June 3.
June	4.	Va. Consol Coup., Old	65		Richmond Dispatch, Richmond Exchange, June 3.
June	4.	Va. Consol Coup., 7-83			Richmond Dispatch, Richmond Exchange, June 3.
June	4.	Va. Consol Coup., 1-85	30		Richmond Dispatch, Richmond Exchange, June 5.
June	5.	Va. 6's, Consols	50		Richmond Dispatch, Richmond Exchange, June 4.
June	5.	Va. 6's, Peelers	42		Richmond Dispatch, Richmond Exchange, June 4.
June	5.	Va. 3-4-5-10-40's	40		Richmond Dispatch, Richmond Exchange, June 4.
June	5.	Va. 3's, New	64⅞	65¼	Richmond Dispatch, Richmond Exchange, June 4.
June	5.	Va. Consols coup., Old	65		Richmond Dispatch, Richmond Exchange, June 4.
June	5.	Va. 3's, New	65		Richmond Dispatch, Baltimore Exchange, June 5.
June	7.	Va. 6's	48		Richmond Dispatch, New York Exchange, June 5.
June	7.	Va. Consols	55		Richmond Dispatch, New York Exchange, June 5.
June	7.	Va. 6's, Consols with coup.	56		Richmond Dispatch, Baltimore Exchange, June 5.
June	7.	Va. 6's, 10-40's with coups.	40		Richmond Dispatch, Baltimore Exchange, June 5.
June	7.	Va. 6's, past due coupons	64		Richmond Dispatch, Baltimore Exchange, June 5.
June	7.	Va. 6's, Consols	50		Richmond Dispatch, Baltimore Exchange, June 5.
June	7.	Va. 6's, Peelers	42		Richmond Dispatch, Richmond Exchange, June 5.
June	7.	Va. 3-4-5 10-40's	40		Richmond Dispatch, Richmond Exchange, June 5.
June	7.	Va. 3's, New	65	65¼	Richmond Dispatch, Richmond Exchange, June 5.
June	7.	Va. Consol. coup., Old	65		Richmond Dispatch, Richmond Exchange, June 5.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

	Farmers' Bank of Va.		Exchange Bank.		Bank of Virginia.	
1860	Nov. 2	102	Nov. 2	105½	Nov. 9	70
	Nov. 9	102	Nov. 9	104½	Nov. 16	70
	Nov. 16	100	Nov. 16	104½	Nov. 23	70
	Nov. 23	100	Nov. 23	100	Nov. 30	70
	Nov. 30	99	Dec. 14	101	Dec. 7	70
	Dec. 7	99			Dec. 14	70
	Dec. 14	100				
1861	Jan. 4	100	Jan. 4	101	Jan. 4	70
	Jan. 18	99	Jan. 11	100	Jan. 18	68
	Jan. 25	99	Jan. 18	100	Jan. 25	68
	Feb. 1	99	Jan. 25	100	Feb. 1	70
	Feb. 8	99	Feb. 1	100	Feb. 8	70
	Feb. 15	98½	Feb. 8	99½	Feb. 15	68
	Feb. 22	98	Feb. 15	99½	Feb. 22	68
	Mar. 1	97	Feb. 22	100	Mar. 1	68
			Mch. 1	100		
1863	Jan. 7	103	Feb. 7	108	Jan. 7	72
	Jan. 21	105	Mar. 17	108	Jan. 29	73
	Jan. 29	105	Mar. 25	108	Mar. 17	78
	Feb. 7	107½	May 20	125	Apr. 18	80½
	Feb. 14	107½	May 27	125	Apr. 22	87
	Feb. 18	107½			May 27	87½
	Mar. 14	111			July 17	90

*All the foregoing quotations on this page are Richmond Stock Exchange, quoted on the dates set opposite the quotations, and published in the Richmond Dispatch.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

Farmers' Bank of Va.

1863	Mar.	17	111
	Apr.	8	131
	Apr.	18	128
	Apr.	22	122
	May	20	125
	May	27	125
	July	29	150
	Aug.	12	152
	Aug.	27	150
	Sept.	1	150
	Sept.	3	150
	Sept.	18	150
	Oct.	1	150

Exchange Bank.

Bank of Virginia.

1863	Aug.	27	105
	Sept.	1	105
	Sept.	3	105
	Sept.	18	111
	Oct.	1	111
	Nov.	27	122-123
	Dec.	4	122
	Dec.	18	129
	Dec.	25	120

All the foregoing quotations on this page are Richmond Stock Exchange, quoted on the dates set opposite the quotations and pubtations and published in the Richmond Dispatch.

ORANGE & ALEXANDRIA RAILROAD COMPANY

Bonds

				6% Bonds.	8% Bonds.	
1860	Nov.	2	.....	81 & Int.	92 & Int.	Richmond Dispatch, Richmond Exchange.
	Nov.	9	.....	81 & Int.	92 & Int.	Richmond Dispatch, Richmond Exchange.
	Nov.	16	.....	90 & Int.	81 & Int.	Richmond Dispatch, Richmond Exchange.
	Nov.	23	.....		81 & Int.	Richmond Dispatch, Richmond Exchange.
	Nov.	30	.....		90	Richmond Dispatch, Richmond Exchange.
	Dec.	14	.....		90	Richmond Dispatch, Richmond Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

ORANGE AND ALEXANDRIA RAILROAD COMPANY—(Continued)

		6% Bonds.	8% Bonds.	
1861	Jan. 4		90	Richmond Dispatch, Richmond Exchange.
	Jan. 25	75	87½	Richmond Dispatch, Richmond Exchange.
	Feb. 1	75	87½	Richmond Dispatch, Richmond Exchange
	Feb. 8	75	87½	Richmond Dispatch, Richmond Exchange.
	Feb. 15	75	87½	Richmond Dispatch, Richmond Exchange.
	Feb. 22	75	87½	Richmond Dispatch, Richmond Exchange.
	Mar. 1	75	87½	Richmond Dispatch, Richmond Exchange.
	Mar. 17	102 & Int.	102 & Int.	Richmond Dispatch, Richmond Exchange.
1863	Apr. 8	102		Richmond Dispatch, Richmond Exchange.
	May 22		110 & Int.	Richmond Dispatch, Richmond Exchange.
	May 27	110 & Int.	110 & Int.	Richmond Dispatch, Richmond Exchange
	June 5	105 & Int.	110 & Int.	Richmond Dispatch, Richmond Exchange.
	June 10	105 & Int.	110 & Int.	Richmond Dispatch, Richmond Exchange.
	Nov. 20	230		Richmond Dispatch, Richmond Exchange.
	Nov. 27	235		Richmond Dispatch, Richmond Exchange.
	Dec. 4	245		Richmond Dispatch, Richmond Exchange.
	Dec. 11	264		Richmond Dispatch, Richmond Exchange.
	Dec. 18	250		Richmond Dispatch, Richmond Exchange.
	Dec. 25	250		Richmond Dispatch Richmond Exchange.

Stocks

1863	Apr. 18 ..... 27½	Richmond Dispatch, Richmond Exchange.
	Aug. 12 ..... 27½	Richmond Dispatch, Richmond Exchange
	Nov. 20 56	Richmond Dispatch, Richmond Exchange

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

CHESAPEAKE & OHIO CANAL COMPANY

Bonds

				Bid.	
1853	July 22.	Guaranteed	Bonds.....	150	Richmond Dispatch, Richmond Exchange.
	Dec. 11.	Guaranteed	Bonds.....	246 & Int.	Richmond Dispatch, Richmond Exchange.

MANASSAS GAP RAILROAD COMPANY

Bonds

				Bid.	Asked.	
1860	Nov. 2.	6%	Bonds.....		65	Richmond Dispatch, Richmond Exchange.
	Nov. 9.	6%	Bonds.....		65	Richmond Dispatch, Richmond Exchange.
	Nov. 16.	6%	Bonds.....		65	Richmond Dispatch, Richmond Exchange.
	Nov. 23.	6%	Bonds.....		65	Richmond Dispatch, Richmond Exchange.
	Nov. 30.	6%	Bonds.....		65	Richmond Dispatch, Richmond Exchange.
1863	Apr. 8.	6%	Bonds.....	58		Richmond Dispatch, Richmond Exchange.
	Nov. 20.	6%	Bonds.....	150		Richmond Dispatch, Richmond Exchange.
	Nov. 27.	6%	Bonds.....	142		Richmond Dispatch, Richmond Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

RICHMOND & DANVILLE RAILROAD COMPANY

Bonds

			Bid.	Asked.	
1863	June	16.	133	137½	Richmond Dispatch, Richmond Exchange.
	July	22.	171		Richmond Dispatch, Richmond Exchange.
	July	29.	189	191	Richmond Dispatch, Richmond Exchange.
	Aug.	12.	210½		Richmond Dispatch, Richmond Exchange.
	Aug.	27.	225		Richmond Dispatch, Richmond Exchange.
	Nov.	13.	233	235	Richmond Dispatch, Richmond Exchange.
	Dec.	4.	248		Richmond Dispatch, Richmond Exchange.
	Dec.	18.	250		Richmond Dispatch, Richmond Exchange.
	Dec	25.	250		Richmond Dispatch, Richmond Exchange.

Stocks

1860	Nov.	2.	60
	Nov.	9.	60
	Nov.	16.	60
	Dec.	14.	58
1861	Jan.	18.	57
	Jan.	25.	57
	Feb.	1.	57
	Feb.	8.	57
	Feb.	15.	57
	Feb.	22.	57
	Mar.	1.	55

All the foregoing quotations on this page are Richmond Stock Exchange, quoted on the dates set opposite the quotations and published in the Richmond Dispatch.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

RICHMOND AND DANVILLE RAILROAD COMPANY, BONDS—Continued.

		Bid.	Asked.
1863	Feb. 14.	105½	
	Apr. 22.	120	
	May 16.	121	
	May 27.	125	
	June 5.	125	
	June 10.	125	

All th eforegoing quotations on this and preceding page are Richmond Stock Exchange, quoted on the dates set opposite the quotations, and published in the Richmond Dispatch.

RICHMOND & YORK RIVER RAILROAD COMPANY

Bonds

		8% Bonds.	
1860	Nov. 2.	90	Richmond Dispatch, Richmond Exchange.
	Nov. 9.	90 & Int.	Richmond Dispatch, Richmond Exchange.
	Nov. 23.	90	Richmond Dispatch, Richmond Exchange.
1863	May 22.	110 & Int.	Richmond Dispatch, Richmond Exchange.
	May 27.	110 & Int.	Richmond Dispatch, Richmond Exchange.
	July 24.	130 & Int.	Richmond Dispatch, Richmond Exchange.
	Aug. 12.	161 & Int.	Richmond Dispatch, Richmond Exchange.
	Aug. 27.	160 & Int.	Richmond Dispatch, Richmond Exchange
	Nov. 27.	174 & Int.	Richmond Dispatch, Richmond Exchange.
	Dec. 4.	220 & Int.	Richmond Dispatch, Richmond Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

RICHMOND AND YORK RIVER RAILROAD COMPANY—(Continued)

Stocks

1863	Mar.	14.....	50
	Apr.	22.....	48
	May	16.....	50
	June	12.....	50
	Aug.	27.....	77
	Sept.	1.....	77

All the foregoing quotations on this page are Richmond Stock Exchange, quoted on the dates set opposite the quotations, and published in the Richmond Dispatch.

SOUTHSIDE RAILROAD COMPANY

Bonds

1860	Nov. 9.	60	Guaranteed.....	90	Richmond Dispatch, Richmond Exchange.	
	Nov. 16.	60	Guaranteed.....	88	Richmond Dispatch, Richmond Exchange.	
	Dec. 14.		Guaranteed.....	88	Richmond Dispatch, Richmond Exchange.	
1861	Jan. 4.		Guaranteed.....	88	Richmond Dispatch, Richmond Exchange.	
	Jan. 29.		Guaranteed.....	125	Richmond Dispatch, Richmond Exchange.	

VIRGINIA CENTRAL RAILROAD COMPANY

Bonds

		1st Mortgage.	2nd Mortgage.	
1860	Nov. 2.....	85 & Int.	82½ & Int.	Richmond Dispatch, Richmond Exchange.
	Nov. 9.....	85 & Int.	82½ & Int.	Richmond Dispatch, Richmond Exchange.
	Nov. 16.....	85 & Int.	82½ & Int.	Richmond Dispatch, Richmond Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

VIRGINIA CENTRAL RAILROAD COMPANY, BONDS—(Continued)

		1st Mortgage.	2nd Mortgage.	
1861	Jan. 4.....	84		Richmond Dispatch, Richmond Exchange.
	Jan. 25.....	84		Richmond Dispatch, Richmond Exchange.
	Feb. 1.....	85	78	Richmond Dispatch, Richmond Exchange.
	Feb. 8.....	85	78	Richmond Dispatch, Richmond Exchange.
	Feb. 22.....	85	78	Richmond Dispatch, Richmond Exchange.
	Mar. 1.....	85		Richmond Dispatch, Richmond Exchange.
1863	Feb. 14.....	112 & Int.	112 & Int.	Richmond Dispatch, Richmond Exchange.
	Feb. 18.....	112 & Int.	112 & Int.	Richmond Dispatch, Richmond Exchange.
	May 16.....	125		Richmond Dispatch, Richmond Exchange.
	May 20.....	130		Richmond Dispatch, Richmond Exchange.
	May 27.....	130		Richmond Dispatch, Richmond Exchange.
	June 27.....		132 & Int.	Richmond Dispatch, Richmond Exchange.
	Sept. 1.....	231 & Int.		Richmond Dispatch, Richmond Exchange.
	Aug. 27.....	231 & Int.		Richmond Dispatch, Richmond Exchange.
	Nov. 20.....	245		Richmond Dispatch, Richmond Exchange.
	Nov. 20.....	210 (6% Dividend Bonds)		Richmond Dispatch, Richmond Exchange.
	Dec. 4.....		270 & Int.	Richmond Dispatch, Richmond Exchange.
	Dec. 11.....		264 & Int.	Richmond Dispatch, Richmond Exchange.
	Dec. 18.....		262 & Int.	Richmond Dispatch, Richmond Exchange.
	Dec. 15.....		262 & Int.	Richmond Dispatch, Richmond Exchange.

Stocks

1860	Nov. 2.....	50	1861	Jan. 4.....	50
	Nov. 9.....	50		Jan. 11.....	47½
	Nov. 16.....	50		Jan. 18.....	47½
	Dec. 14.....	50		Jan. 25.....	47½

1863	Jan. 21.....	75
	Jan. 29.....	75
	Apr. 18.....	100½-101½
	May 2.....	94

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

VIRGINIA CENTRAL RAILROAD COMPANY, STOCKS—(Continued)

Feb.	8	47½	June	5	100
Feb.	15	47½	July	22	116
Feb.	22	47½	July	24	107
Mar.	1	45	Aug.	27	119
			Sept.	1	119
			Nov.	27	156

All the foregoing quotations on this page are Richmond Stock Exchange, quoted on the dates set opposite the quotations, and published in the Richmond Dispatch.

VIRGINIA & TENNESSEE RAILROAD COMPANY

Bonds

		1st M'tg.	2d Mtg	3d Mtg	
1860	Nov. 9	85 & Int.	81 & Int.	85 & Int.	Richmond Dispatch, Richmond Exchange.
	Nov. 16	85 & Int.	81 & Int.	85 & Int.	Richmond Dispatch, Richmond Exchange.
1863	Mar. 14		111 & Int.		Richmond Dispatch, Richmond Exchange.
	Apr. 22		120		Richmond Dispatch, Richmond Exchange.
	May 2		121-123½		Richmond Dispatch, Richmond Exchange.
	May 22			110 & Int.	Richmond Dispatch, Richmond Exchange.
	May 27			110 & Int.	Richmond Dispatch, Richmond Exchange.
	July 24		156 & Int.	131 & Int.	Richmond Dispatch, Richmond Exchange.
	Sept. 17		231 & Int.	170 & Int.	Richmond Dispatch, Richmond Exchange.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

VIRGINIA AND TENNESSEE RAILROAD COMPANY, BONDS—(Continued)

	1st Mtg.	2d Mtg.	3d Mtg.	
Oct. 1	.....	231 & Int.	170 & Int.	Richmond Dispatch, Richmond Exchange.
Nov. 20	.....	242		Richmond Dispatch, Richmond Exchange.
Dec. 4	.....	242 & Int.		Richmond Dispatch, Richmond Exchange.

Stocks

1863 July 24. 115
Sept. 3.....135

James River & Kanawha Co.

1860 Nov. 2.....18½
Nov. 9.....18½
Nov. 16.....18½
Dec. 14.....18½

1861 Mar. 1.....18

Richmond & Petersburg R. R. Co.

1860 Nov. 2.....64
Nov. 9.....64
Nov. 16.....64
Dec. 14.....64

1861 Jan. 4.....64
Jan. 25.....60
Feb. 1.....60
Feb. 8.....60
Feb. 15.....60
Feb. 22.....60
Mar. 1.....57½

Richmond, Fredericksburg & Potomac R. R. Co.

1860 Nov. 2.....80
Nov. 9.....80
Dec. 14.....76½

1861 Jan. 4.....76½
Jan. 11.....77
Jan. 18.....77
Jan. 25.....77
Feb. 1.....77
Feb. 8.....77
Feb. 15.....77
Mar. 1.....78

All the foregoing quotations on this page are Richmond Stock Exchange, quoted on the dates set opposite the quotations, and published in the Richmond Dispatch.

PLAINTIFF'S EXHIBIT No. 2—(*Continued.*)

Quotations On Virginia State Banks, Railroads and Other Stocks and Bonds, From Newspapers in Virginia State Library, used In Class "C."

STOCKS—(Continued)

James River & Kanawha Co.

1863	Apr. 8	19
	Apr. 18	20½
	Apr. 22	19
	May 2	20
	June 16	22
	June 27	22
	June 30	22
	July 24	22
	Aug. 27	20
	Sept. 1	20
	Sept. 3	20

Richmond & Petersburg R. R. Co.

1863	June 5	140
	June 10	140

Richmond, Fredericksburg & Potomac R. R. Co.

1863	Apr. 22	105
	May 27	110
	Aug. 12	155

All the foregoing quotations on this page are Richmond Stock Exchange, quoted on the dates set opposite the quotations, and published in the Richmond Dispatch.

PLAINTIFF'S REVISED EXHIBIT No. 2.

QUOTATIONS AND SALES REPORTED BY THE NEW YORK HERALD,

As New York Stock Exchange Quotations and Sales between November 2, 1860, and March 2, 1861

Date of Newspaper. 1860		Bid.	Asked.	Sales.	At	Date.
Nov.	2—Virginia 6's	86	86½	1,000	86	Nov. 1, 1860
	2—Virginia 6's	82	84	5,000	86¼	1, 1860
	3—Virginia 6's	80	82	3,000	86¼	2, 1860
	3—Virginia 6's	86½	87	4,000	86½	2, 1860
	3—Virginia 6's	80	82	16,000	90	8, 1860
	9—Virginia 6's	88	89½	4,000	88½	9, 1860
	10—Virginia 6's	88¼	88½	4,000	88	9, 1860
	16—Virginia 6's	85	86	5,000	86	15, 1860
	16—Virginia 6's			3,000	85	15, 1860
	16—Virginia 6's			1,000	85	15, 1860
	17—Virginia 6's	84½	85	10,000	85	16, 1860
	17—Virginia 6's			500	86	16, 1860
	18—Virginia 6's	76		10,500	80	17, 1860
	18—Virginia 6's			500	80	17, 1860
	18—Virginia 6's			2,000	77	17, 1860
	24—Virginia 6's	80	80½	1,000	81	23, 1860
	24—Virginia 6's			6,000	80	23, 1860
	23—Virginia 6's	82	82½	1,000	82	22, 1860
	25—Virginia 6's	81	81¼	3,000	81	24, 1860
Dec.	1—Virginia 6's	79	79¼	1,000	78½	30, 1860
	1—Virginia 6's			4,000	79	30, 1860
	1—Virginia 6's			4,000	79¼	30, 1860
	1—Virginia 6's			10,000	79	30, 1860

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES REPORTED BY THE NEW YORK HERALD,

As New York Stock Exchange Quotations and Sales between November 2, 1860, and March 2, 1861.

Date of Newspaper.	Bid.	Asked.	Sales.	At	Date.
1860					
Dec. 2—Virginia 6's			1,000	80½	Dec. 1, 1860
2—Virginia 6's			8,000	80¼	1, 1860
7—Virginia 6's			8,000	76	6, 1860
8—Virginia 6's			3,000	74	7, 1860
8—Virginia 6's			15,000	74	7, 1860
9—Virginia 6's			1,000	75	8, 1860
14—Virginia 6's			No sales reported.		8, 1860
15—Virginia 6's			1,000	79½	14, 1860
15—Virginia 6's			4,000	78½	14, 1860
16—Virginia 6's			1,000	74½	15, 1860
16—Virginia 6's			3,000	74¼	15, 1860
16—Virginia 6's			5,000	74	15, 1860
1861					
Jan. 5—Virginia 6's	76	77	1,000	76½	Jan. 3, 1861
5—Virginia 6's			5,000	77	3, 1861
12—Virginia 6's	75	75¼	3,000	75½	11, 1861
19—Virginia 6's	75½	76	1,000	76	18, 1861
26—Virginia 6's	76	77	2,000	76½	25, 1861
26—Virginia 6's			3,000	76	25, 1861
Feb. 2—Virginia 6's	73	74¼	10,000	75	Feb. 1, 1861
9—Virginia 6's	74	74½	5,000	74	8, 1861
16—Virginia 6's	76	76½	3,000	75¼	15, 1861
16—Virginia 6's			2,000	76¼	15, 1861
23—Virginia 6's	75½	76	1,000	75⅛	22, 1861

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES REPORTED BY THE NEW YORK HERALD,

As New York Stock Exchange Quotations and Sales between November 2, 1860, and March 2, 1861.

Date of Newspaper.	Bid.	Asked.	Sales.	At	Date.
1861					
Feb. 23—Virginia 6's			2,000	75¼	Feb. 22, 1861
Mar. 2—Virginia 6's	78	79½	23,500	81	Mar. 1, 1861
2—Virginia 6's			1,000	80½	1, 1861

BETWEEN JANUARY 4, 1863, AND OCTOBER 31, 1863.

1863					
Jan. 4—Virginia 6's			2,000	62	Jan. 3, 1863
6—Virginia 6's			2,000	62	5, 1863
7—Virginia 6's	62½	63	2,000	62½	6, 1863
8—Virginia 6's	62	63½	No sales.		6, 1863
21—Virginia 6's			1,000	65½	20, 1863
22—Virginia 6's	65¾	66	No sales.		21, 1863
23—Virginia 6's			6,000	68	22, 1863
25—Virginia 6's	69	70	4,000	70	24, 1863
30—Virginia 6's			2,000	72	29, 1863
31—Virginia 6's			4,000	72½	30, 1863
Feb. 1—Virginia 6's			2,500	71	31, 1863
8—Virginia 6's	73	74	3,000	73	Feb. 7, 1863
14—Virginia 6's			No sales reported, but weekly average	73	
20—Virginia 6's			2,000	71½	Feb. 19, 1863
21—Virginia 6's			No sales reported, but weekly average	73	

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES REPORTED BY THE NEW YORK HERALD,

As New York Stock Exchange Quotations and Sales between March 1, 1863, *and December* 31, 1863.

MARCH AND APRIL, FILE MISSING.
(See New York Times quotations and sales for these two months.)

Date of Newspaper. 1863	Bid.	Asked.	Sales.	At	Date.
May 3—Virginia 6's			4,000	65	May 2, 1863
20—Virginia 6's	67	69	3,000	68	19, 1863
21—Virginia 6's			5,000	66	20, 1863
22—Virginia 6's			1,500	66	20, 1863
22—Virginia 6's			14,000	65	21, 1863
27—Virginia 6's	66		4,000	66	26, 1863
June 2—Virginia 6's			1,000	66½	June 1, 1863
6—Virginia 6's			2,000	68½	5, 1863
12—Virginia 6's	53		No sales reported.		
17—Virginia 6's			5,000	66½	June 16, 1863
26—Virginia 6's			7,000	66½	25, 1863
July 16—Virginia 6's			5,000	61	July 15, 1863
22—Virginia 6's	61		No sales reported.		
25—Virginia 6's			1,000	61	July 24, 1863
28—Virginia 6's			10,000	61	27, 1863
29—Virginia 6's			4,000	61¼	28, 1863
31—Virginia 6's			15,000	61¼	30, 1863
Aug. 8—Virginia 6's	61	64	No sales reported.		
12—Virginia 6's			5,000	61	Aug 11, 1863
18—Virginia 6's			500	61	17, 1863
28—Virginia 6's			6,000	62	27, 1863

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES REPORTED BY THE NEW YORK HERALD,

As New York Stock Exchange Quotations and Sales between March 1, 1863, and December 31, 1863.

Date of Newspaper. 1863	Bid.	Asked.	Sales.	At	Date.
Aug. 29—Virginia 6's			2,000	62	Aug. 28, 1863
29—Virginia 6's			5,000	60	28, 1863
Sept. 19—Virginia 6's	58	60	No sales reported.		
21—Virginia 6's			Sales aveage for week 9-19-63	59	
24—Virginia 6's			1,000	58½	Sept. 23, 1863
29—Virginia 6's			3,000	60½	28, 1863
Oct. 3—Virginia 6's	60	62	No sales reported.		
7—Virginia 6's	58	62	5,000	68½	Oct. 6, 1863
22—Virginia 6's			1,000	59¾	21, 1863
23—Virginia 6's			4,000	58	22, 1863
24—Virginia 6's	56	57	3,000	55	23, 1863
31—Virginia 6's	55	55½	1,000	55	30, 1863

NOVEMBER AND DECEMBER FILES MISSING.
(See New York Times quotations and sales for these two months.)

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES BY THE NEW YORK TIMES,

As New York Stock Exchange Quotations and Sales during March and April, 1863, and November and December, 1863.

Date of Newspaper. 1863		Bid.	Asked.	Sales.	At	Date.
Mar. 2	Virginia 6's.	No quotations.		2,000	69½	Feb. 28, 1863
2	Virginia 6's.	No quotations.		500	68	28, 1863
3	Virginia 6's.	No quotations.		2,000	69	Mar. 2, 1863
3	Virginia 6's.	No quotations.		3,000	69¼	2, 1863
5	Virginia 6's.	No quotations.		1,000	69¼	4, 1863
11	Virginia 6's.	No quotations.		1,000	68	10, 1863
13	Virginia 6's.	No quotations.		5,500	67	12, 1863
14	Virginia 6's.	No quotations.		5,000	65½	13, 1863
17	Virginia 6's.	No quotations.		2,000	66	16, 1863
23	Virginia 6's.	No quotations.		21,000	65	22, 1863
23	Virginia 6's.	No quotations.		2,000	65	22, 1863
26	Virginia 6's.	No quotations.		7,000	63	25, 1863
27	Virginia 6's.	No quotations.		7,000	63	26, 1863
Apr. 1	Virginia 6's.	No quotations.		5,000	62½	31, 1863
1	Virginia 6's.	No quotations.		500	62	31, 1863
6	Virginia 6's.	No quotations.		2,000	66	Apr. 5, 1863
7	Virginia 6's.	No quotations.		2,000	66	6, 1863
10	Virginia 6's.	No quotations.		2,000	63	9, 1863
11	Virginia 6's.	No quotations.		2,000	63	10, 1863
15	Virginia 6's.	No quotations.		1,000	65	14, 1863
18	Virginia 6's.	No quotations.		4,000	62	17, 1863
21	Virginia 6's.	No quotations.		4,000	64	20, 1863
Nov. 1	Virginia 6's.	No quotations.		1,000	55½	Oct. 31, 1863

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES BY THE NEW YORK TIMES,

As New York Stock Exchange Quotations and Sales during March and April, 1863, and November and December, 1863.

Date. 1863	Bonds.	Reported by	Quantity. Sales.	Bid.	Asked.	Quoted.
Nov. 7	—Virginia ½'s.	No quotations.	1,000		55	Nov. 6, 1863
8	—Virginia 6's.	No quotations.	2,000		55	7, 1863
12	—Virginia 6's.	No quotations.	2,500		52	11, 1863
14	—Virginia 6's.	No quotations.	500		54	12, 1863
21	—Virginia 6's.	No quotations.	3,000		53	20, 1863
Dec. 1	—Virginia 6's.	No quotations.	7,000		55	30, 1863
2	—Virginia 6's.	No quotations.	5,000		55	Dec. 1, 1863
2	—Virginia 6's.	No quotations.	5,000		54	1, 1863
3	—Virginia 6's.	No quotations.	2,000		55	2, 1863
4	—Virginia 6's.	No quotations.	1,000		55	3, 1863
9	—Virginia 6's.	No quotations.	2,000		55	8, 1863
14	—Virginia 6's.	No quotations.	2,000		54	12, 1863
21	—Virginia 6's.	No quotations.	10,500		49	19, 1863
25	—Virginia 6's.	No quotations.	1,000		49	24, 1863

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES OF VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch from November 2, 1860 *to March* 1, 1861, *and from January* 3, 1863, *to December* 25, 1863.

Date.	Bonds.	Reported by.	Quantity.	Sales.	B'd.	Asked.	Quoted.
1860							
Nov. 2	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	89			
9	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	88			
16	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	88			
23	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	80			
30	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	86			
Dec. 7	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	84			
14	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	82½			
14	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	84			
1861							
Jan. 4	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	80			
11	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	78			
11	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	80			
18	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	78½			
18	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	80			
25	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	81			
Feb. 1	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	81			
8	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	79			
15	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	81			
22	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	81			
Mar. 1	—Va. 6's Reg.	John A. Lancaster & Son.	Not given.	82			
1863							
Jan. 3	—Va. 6's Reg.	Unknown.					110
7	—Va. 6's Reg.	Unknown.					110
21	—Va. 6's Reg.	Unknown.					110
29	—Va. 6's Reg.	Unknown.					110

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES OF VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch from November 2, 1860 *to March* 1, 1861, *and from January* 3, 1863, *to December* 25, 1863.

Date. 1863	Bonds.	Reported by.	Quantity.	Sales.	Bid.	Asked.	Quoted.
Feb. 7	Va. 6's Reg.	Unknown.					108
14	Va. 6's Reg.	John A. Lancaster & Son.	Not given.	108			
18	Va. 6's Reg.	Unknown.	Not given.	106½			
21	Va. 6's Reg.	Unknown.	Not given.	106			
25	Va. 6's Reg.	Unknown.					106
Mar. 14	Va. 6's Reg.	Unknown.					106
17	Va. 6's Reg.	Unknown.					108
25	Va. 6's Reg.	Unknown.					112
Apr. 8	Va. 6's Reg.	Davenport & Co.			112	114	
18	Va. 6's Reg.	Lancaster & Co.			112	113	
22	Va. 6's Reg.	Unknown.					112
29	Va. 6's Reg.	Unknown.					112 & Int.
May 2	Va. 6's Reg.	Davenport & Co.			111¼	111½	
16	Va. 6's Reg.	Davenport & Co.			112		
20	Va. 6's Reg.	Unknown.			112 & Int.		
22	Va. 6's Reg.	Unknown.					112 & Int.
27	Va. 6's Reg.	Lancaster & Co.	Not given.	112			
28	Va. 6's Reg.	Unknown.					112 & Int.
June 5	Va. 6's Reg.	Unknown.					113
10	Va. 6's Reg.	Unknown.					115
12	Va. 6's Reg.	Unknown.	Not given.	115			
16	Va. 6's Reg.	Davenport & Co.	Not given.	130½			
27	Va. 6's Reg.	Unknown.					131
30	Va. 6's Reg.	Unknown.					131

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES OF VIRGINIA STATE BONDS.

Reported in the Richmond Dispatch from November 2, 1860 to March 1, 1861, and from January 3, 1863 to December 25, 1863.

Date. 1863	Bonds.	Reported by.	Quantity.	Sales.	Bid.	Asked.	Quoted.
July	17—Va. 6's Reg.	Unknown.					
	22—Va. 6's Reg.	Davenport & Co.	Not given.	160			135
	22—Va. Coupons.	Davenport & Co.	Not Given.				
	4 coupons on.						
	24—Va. 6's Reg.	Lancaster & Co.		325			
	24—Va. Interest paying.	Lancaster & Co.	Not given.	175			
	29—Va. 6's Reg.	Unknown.	Not given.	285			
Aug.	12—Va. 6's Reg.	Unknown.	Not given.	175			
	27—Va. 6 s Reg.	Unknown.	Not given.	209½			
Sep.	1—Va. 6's Reg.	Unknown.					210
	3—Va. 6's, 1868.	Lancaster & Co.	Not given.	180			210
	3—Va. 6's, 1896.	Lancaster & Co.	Not given.	186			
	17—Va. 6's Reg.	Long dates. Unknown.					
	17—Va. Coupon Bonds.	Unknown.					180
Oct.	1—Va. 6's Reg.	Long dates. Unknown.					425
	1—Va. Coupon Bonds.	Unknown.					185
	23—Va. 6's Reg.	Long dates. Unknown.					425
	23—Va. 6's Reg.	Overdue. Unknown.					200
	23—Va. Coupon Bonds.	Unknown.					172
	30—Va. 6's	Unknown.					420
Nov.	6—Va. 6's	Unknown.					206
	13—Va. 6's Reg.	Long dates. Unknown.					206
	13—Va. 6's Reg.	Overdue. Unknown.					239
							205

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES OF VIRGINIA STATE BONDS.

Reported in the Richmond Dispatch from November 2, 1860 to March 1, 1861, and from January 3, 1863 to December 25, 1863.

Date.	Bonds.	Reported by	Quantity Sales.		Bid.	Asked.	Quoted.	
1863.								
	13—Va. Coupons, with Interest.	Unknown.					430	
	13—Va. Coupons, without Interest.	Unknown.					410	
	20—Va. 6's Reg. 1891.	Lancaster & Co.	Not given.	253				
Nov.	20—Va. 6's Reg., 1890.	Lancaster & Co.	Not given.	255				
	20—Va. 6's Reg.	Lancaster & Co.	Not given.	257				
	20—Va. 6's. Past due.	Lancaster & Co.	Not given.	197				
	27—Va. Coupon Bonds.	Lancaster & Co.	Not given.	448				
	27—Va. 6's Reg.	Lancaster & Co.	Not given.	257				
							225	& Int.
Dec.	4—Va. 6's Reg.	Unknown.	Not given.				475	
	4—Va. Coupon Bonds.	Unknown.						
	11—Va. 6's Reg.	Lancaster & Co.	Not given.	247	& Int.			
	11—Va. 6's Reg. Past due.	Lancaster & Co.	Not given.	215				
							235	
	18—Va. 6's Reg. Long dates.	Unknown.					203	
	18—Va. 6's Reg. Past due.	Unknown.					235	
	25—Va. 6's Reg. Long dates.	Unknown.						

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES ON VIRGINIA RAILROADS, VIRGINIA STATE BANKS, AND OTHER STOCKS,

From January 1, 1861 *to December* 31, 1863.

The New York Heralds in the State Library for the above period do not show quotations or sales of any of the above stocks.

No other New York newspapers are obtainable in the Virginia State Library for this period.

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks and other Stocks, from January 1, 1861, *to December* 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

RAILROADS AND CANAL COMPANIES.

RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD COMPANY.

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.	
1860.							
Nov. 2	John A. Lancaster & Son.	Not given.	80				
9	John A. Lancaster & Son.	Not given.	80				
Dec. 14	John A. Lancaster & Son.	Not given.				76½	Last sales.
1861.							
Jan. 4	John A. Lancaster & Son.	Not given.				76½	Last sales.
11	John A. Lancaster & Son.	Not given.				77	Last sales.
18	John A. Lancaster & Son.	Not given.				77	Last sales.
25	John A. Lancaster & Son.	Not given.				77	Last sales.
Feb. 1	John A. Lancaster & Son.	Not given.				77	Last sales.
8	John A. Lancaster & Son.	Not given.				77	Last sales.
15	John A. Lancaster & Son.	Not given.				77	Last sales.
22	John A. Lancaster & Son.	Not given.				77	Last sales.
Mar. 1	John A. Lancaster & Son.	Not given.				78	Last sales.
1863							
Apr. 22	Source not known.	Not given.				105	
May 27	Lancaster & Co.	Not given.	110				
Aug. 12	Vendor not known.	Not given.	155				

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks and other Stocks, from January 1, 1861, *to December* 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

RAILROADS AND CANAL COMPANIES.

VIRGINIA AND TENNESSEE RAILROAD COMPANY.

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.	
1863							
July 24	—Lancaster & Co.	Not given.	115				
Sep. 3	—Lancaster & Co.	Not given.	135				

JAMES RIVER AND KANAWHA COMPANY.

1860							
Nov. 2	—John A. Lancaster & Son.	Not given.					
9	—John A. Lancaster & Son.	Not given.				18½	Last sales.
16	—John A. Lancaster & Son.	Not given.				18½	Last sales.
Dec. 14	—John A. Lancaster & Son.	Not given.				18½	No recent sales.
1861						18½	Last sales.
Mar. 1	—John A. Lancaster & Son.	Not given.					
1863						18	Last sales.
Apr. 8	—Davenport & Co.	Not given.	19				
18	—Lancaster & Co.	Not given.	20½				
22	—Source not known.	Not given.				19	
May 2	—Davenport & Co.	Not given.	20				
June 16	—Davenport & Co.	Not given.	22				
27	—Source not known.	Not given.				22	
30	—Source not known.	Not given.				22	

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks and other Stocks, from January 1, 1861, to December 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

RAILROADS AND CANAL COMPANIES.

JAMES RIVER AND KANAWHA COMPANY—(Continued)

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.
1863						
July 24	—Lancaster & Co.	Not given.	22			
Aug. 27	—Source not known.	Not given.				20
Sep. 1	—Source not known.	Not given.				20
3	—Lancaster & Co.	Not given.				20

VIRGINIA CENTRAL RAILROAD COMPANY.

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.	
1860							
Nov. 2	—John A. Lancaster & Son.	Not given.	50				
9	—John A. Laster & Son.	Not given.	50				
16	—John A. Lancaster & Son.	Not given.				50	Last sales.
Dec. 14	—John A. Lancaster & Son.	Not given.				50	Last sales.
1861							
Jan. 4	—John A. Lancaster & Son.	Not given.				50	Last sales.
11	—John A. Lancaster & Son.	Not given.				47½	Last sales.
18	—John A. Lancaster & Son.	Not given.				47½	Last sales.
25	—John A. Lancaster & Son.	Not given.				47½	Last sales.
Feb. 8	—John A. Lancaster & Son.	Not given.				47½	Last sales.
15	—John A. Lancaster & Son.	Not given.				47½	Last sales.
22	—John A. Lancaster & Son.	Not given.				47½	Last sales.
Mar. 1	—John A. Lancaster & Son.	Not given.			45		

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks and other Stocks, from January 1, 1861, *to December* 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

RAILROADS AND CANAL COMPANIES.

VIRGINIA CENTRAL RAILROAD COMPANY—(Continued)

1863 Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.
Jan. 21	—Sources not known.	Not given.				75
29	—Sources not known.	Not given.				75
Apr. 18	—Lancaster & Co.	Not given.	100½			
May 2	—Davenport & Co.	Not given.	94			
June 5	—Source not known.	Not given.				100
July 22	—Davenport & Co.	Not given.	116			
24	—Lancaster & Co.	Not given.	107			
Aug. 27	—Source not known.	Not given.				119
Sep. 1	—Source not known.	Not given.				119
Nov. 27	—Lancaster & Co.	Not given.	156			

RICHMOND AND PETERSBURG RAILROAD COMPANY.

1860						
Nov. 2	—John A. Lancaster & Son.	Not given.			64	Last sales.
9	—John A. Lancaster & Son.	Not given.			64	Last sales.
16	—John A. Lancaster & Son.	Not given.			64	Last sales.
Dec. 14	—John A. Lancaster & Son.	Not given.			64	Last sales.

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks and other Stocks, from January 1, 1861, to December 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

RAILROADS AND CANAL COMPANIES.

RICHMOND AND PETERSBURG RAILROAD COMPANY—(Continued)

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.	
1861							
Jan. 4	—John A. Lancaster & Son.	Not given.				64	Last sales.
25	—John A. Lancaster & Son.	Not given.				60	Last sales.
Feb. 1	—John A. Lancaster & Son.	Not given.				60	Last sales.
8	—John A. Lancaster & Son.	Not given.				60	Last sales.
15	—John A. Lancaster & Son.	Not given.				60	Last sales.
22	—John A. Lancaster & Son.	Not given.				60	Last sales.
Mar. 1	—John A. Lancaster & Son.	Not given.				57½	Last sales.
1863							
June 5	—Source not known.	Not given.				140	
10	—Source not known.	Not given.				140	

ORANGE AND ALEXANDRIA RAILROAD COMPANY.

1863			
Apr. 18	—Lancaster & Co.	Not given.	27½
Aug. 12	—Vendor not known.	Not given.	27½
Nov. 20	—Lancaster & Co.	Not given.	56

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*

Quotations and Sales on Virginia State Railroads, Virginia State Banks and other Stocks, from January 1, 1861, *to December* 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

RAILROADS AND CANAL COMPANIES.

RICHMOND AND DANVILLE RAILROAD COMPANY.

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.	
1860							
Nov. 2	—John A. Lancaster & Son.	Not given.	60				
9	—John A. Lancaster & Son.	Not given.				60	Last sales.
16	—John A. Lancaster & Son.	Not given.				60	Last sales.
Dec. 14	—John A. Lancaster & Son.	Not given.				58	Last sales.
1861			57				
Jan. 18	—John A. Lancaster & Son.	Not given.					
25	—John A. Lancaster & Son.	Not given.				57	Last sales.
Feb. 1	—John A. Lancaster & Son.	Not given.				57	Last sales.
8	—John A. Lancaster & Son.	Not given.				57	Last sales.
15	—John A. Lancaster & Son.	Not given.				57	Last sales.
22	—John A. Lancaster & Son.	Not given.				57	Last sales.
Mar. 1	—John A. Lancaster & Son.	Not given.				55	Last sales.
1863							
Feb. 14	—John A. Lancaster & Son.	Not given.	105½				
Apr. 22	—Source not known.	Not given.				120	
May 16	—Davenport & Co.	Not given.	121				
27	—Lancaster & Co.	Not given.	125				
June 5	—Source not known.	Not given.				125	
10	—Source not known.	Not given.				125	

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks, and Other Stocks, from January 1, 1861, to December 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

BANKS.

FARMERS' BANK OF VIRGINIA.

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.	
1860							
Nov. 2	John A. Lancaster & Son.	Not given.				102	No recent sales.
9	John A. Lancaster & Son.	Not given.			102		
16	John A. Lancaster & Son.	Not given.				100	Last sales
23	John A. Lancaster & Son.	Not given.			100		held at
30	John A. Lancaster & Son.	Not given.	99				
Dec. 7	John A. Lancaster & Son.	Not given.	99				
14	John A. Lancaster & Son.	Not given.				100	Last sales.
1861							
Jan. 4	John A. Lancaster & Son.	Not given.				100	Last sales.
18	John A. Lancaster & Son.	Not given.	99				
25	John A. Lancaster & Son.	Not given.	99				
Feb. 1	John A. Lancaster & Son.	Not given.				99	Last sales.
8	John A. Lancaster & Son.	Not given.				99	Last sales.
15	John A. Lancaster & Son.	Not given.	98½				
22	John A. Lancaster & Son.	Not given.				98	Last sales.
Mar. 1	John A. Lancaster & Son.	Not given.	97				
1863							
Jan. 7	Source not known.	Not given.	103				
21	Source not known.	Not given.				105	

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks, and Other Stocks, from January 1, 1861, *to December* 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

BANKS.

FARMERS BANK OF VIRGINIA—(Continued)

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.
1863						
Jan. 29	—Source not known.	Not given.				105
Feb. 7	—Source not known.	Not given.				107½
14	—John A. Lancaster & Son.	Not given.	107½			
18	—Source not known.	Not given.				107½
Mar. 14	—Source not known.	Not given.				111
17	—Source not known.	Not given.				111
Apr. 8	—Davenport & Co.	Not given.	131			
18	—Lancaster & Co.	Not given.	128			
22	—Source not known.	Not given.				122
May 20	—Source not known.	Not given.				125
27	—Lancaster & Co.	Not given.	125			
July 29	—Vendor not known.	Not given.	150			
Aug. 12	—Vendor not known.	Not given.	152			
27	—Source not known.	Not given.				150
Sep. 1	—Source not known.	Not given.				150
3	—Lancaster & Co.	Not given.				150
1863						
Sep. 18	—Source not known.					150
Oct. 1	—Source not known.					150

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks, and Other Stocks, from January 1, 1861, to December 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

BANKS.

BANK OF VIRGINIA.

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.	
1860.							
Nov. 2	—John A. Lancaster & Son.	Not given.			72		
9	—John A. Lancaster & Son.	Not given.				70	Last sales.
16	—John A. Lancaster & Son.	Not given.	70				
23	—John A. Lancaster & Son.	Not given.			70		
30	—John A. Lancaster & Son.	Not given.	70				
Dec. 7	—John A. Lancaster & Son	Not given.	70				
14	—John A. Lancaster & Son.	Not given.	70				
1861							
Jan. 4	—John A. Lancaster & Son.	Not given.				70	Last sales.
18	—John A. Lancaster & Son.	Not given.			68		
25	—John A. Lancaster & Son.	Not given.				68	Last sales.
Feb. 1	—John A. Lancaster & Son.	Not given.			70		
8	—John A. Lancaster & Son.	Not given.			70		
15	—John A. Lancaster & Son.	Not given.	68				
22	—John A. Lancaster & Son.	Not given.				68	Last sales.
Mar. 1	—ohn A. Lancaster & Son.	Not given.	68				

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks, and Other Stocks, from January 1, 1861, *to December* 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

BANKS.

BANK OF VIRGINIA—(Continued)

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.
1863						
Jan. 7	—Source unknown.	Not given.	72			
21	—Source unknown.	Not given.			73	
29	—Source unknown.	Not given.			73	
Mar. 17	—Source unknown.	Not given.			78	
Apr. 18	—Lancaster & Co.	Not given.	80½			
22	—Source not known.	Not given.			87	
May 27	—Lancaster & Co.	Not given.	87½			
July 17	—Vendor not known.	Not given.	90			
Aug. 27	—Source not known.	Not given.			105	
Sep. 1	—Source not known.	Not given.			105	
3	—Lancaster & Co.	Not given.			105	
18	—Source not known.	Not given.			111	
Oct. 1	—Source not known.	Not given.			111	
Nov. 27	—Lancaster & Co.	Not given.	123			
Dec. 4	—Source not known.	Not given.			122	
18	—Source not known.	Not given.			129	
25	—Source not known.	Not given.			120	

EXCHANGE BANK.

1860						
Nov. 2	—John A. Lancaster & Son.	Not given.	105½			
9	—John A. Lancaster.	Not given.	104½			

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

Quotations and Sales on Virginia State Railroads, Virginia State Banks, and other Stocks, from January 1, 1861, *to December* 31, 1863.

COMPILED FROM THE RICHMOND DISPATCH.

BANKS.

EXCHANGE BANK—(Continued)

Date.	Source.	Quantity.	Sales.	Bid.	Asked.	Quoted.	
1860							
Nov. 16—	John A. Lancaster.	Not given.				104½	Last sales.
23—	John A. Lancaster.	Not given.			100		
Dec. 14—	John A. Lancaster.	Not given.		101			
1861							
Jan. 4—	John A. Lancaster.	Not given.		101			
11—	John A. Lancaster.	Not given.	100				
18—	John A. Lancaster.	Not given.	100				
25—	John A. Lancaster.	Not given.	100				
Feb. 1—	John A. Lancaster.	Not given.				100	Last sales.
8—	John A. Lancaster.	Not given.	99½				
15—	John A. Lancaster.	Not given.	99½				
22—	John A. Lancaster.	Not given.	100				
Mar. 1—	John A. Lancaster.	Not given.	100				
1863							
Jan. 29—	Sources not known.	Not given.				106	
Feb. 7—	Source not known.	Not given.				108	
Mar. 17—	Source not given.	Not known.				108	
25—	Source not known.	Not given.				108	
May 20—	Source not known.	Not given				125	
27—	Lancaster & Co.		125				

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES ON VIRGINIA STATE BONDS,

From the New York Herald, for dates on which Virginia exchanged her holdings in Internal Improvement Companies for her own Bonds. (New York Stock Exchange.)

Date of Newspaper.		Bid.	Asked.	Sales.	At	Date.
1870						
Mar. 29—Va. 6's. Old		71	71½	1,000	69	Mar. 28, 1870
29—Va. 6's. Old.				1,000	69½	28, 1870
29—Va. 6's. Old.				2,000	70	28, 1870
29—Va. 6's. New.		70½	70⅞	1,500	70	28, 1870
29—Va. 6's. New.				3,500	70½	28, 1870
31—Va. 6's. Old.				500	71	30, 1870
31—Va. 6's. Old.				8,000	72	30, 1870
31—Va. 6's. Reg.	Old.			10,000	58	30, 1870
Dec. 2—Va. 6's. Old.				8,000	64	Dec. 1, 1870
14—Va. 6's. Old.		66	67	3,000	66	13, 1870
31—Va. 6's. Old.		67	68			30, 1870
31—Va. 6's. New.		63	65			30, 1879
31—Va. 6's. Reg.	Old.	50¼	50¾			30, 1870
14—Va. 6's. Old.		64	65			13, 1870
1871						
Jan. 1—Va. 6's. Old.		67	68			Dec. 31, 1870
1—Va. 6's. New.		63	65			31, 1870
1—Va. 6's. Reg.	Old.	50¼	50¾			31, 1870
Feb. 2—Va. 6's. Old.		64	65			31, 1870
2—Va. 6's. New.		61	62			31, 1870
2—Va. 6's. Reg.	Old.	49½	50	5,000	49¾	Feb. 1, 1871
Mar. 2—Va. 6's. Old.		66	66⅞			Mar. 1, 1871

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES ON VIRGINIA STATE BONDS,

From the New York Herald, for dates on which Virginia exchanged her holdings in Internal Improvement Companies for her own Bonds. (New York Stock Exchange.)

Date of Newspaper.		Bid.	Asked.	Sales.	At	Date.
1871						
Mar. 2	Va. 6's. New.	61	62			Mar. 1, 1871
2	Va. 6's. Reg. Old.	53	53½	15,000	53	1, 1871
8	Va. 6's. Old.	65½	66			7, 1871
8	Va. 6's. New.	65	65½			7, 1871
8	Va. 6's. Reg. Old.	52	52¼	5,000	52¼	7, 1871
17	Va. 6's. New.			1,000	67	16, 1871
22	Va. 6's. Old.	68	69			22, 1871
22	Va. 6's. New.	69½	70⅛	1,000	70	21, 1871
22	Va. 6's. Reg. Old.	54	54½	11,000	54⅛	21, 1871
30	Va. 6's. New.			1,000	71	29, 1871
30	Va. 6's. New.			4,000	71¼	29, 1871
Apr. 1	Va. 6's. Old.	73½	75	2,000	73½	31, 1871
1	Va. 6's. New.	71½	73			31, 1871
1	Va. 6's. Reg. Old.	56¼	56½	10,000	55¾	31, 1871
5	Va. 6's. Old.	70	72	1,000	72½	Apr. 4, 1871
5	Va. 6's. New.	71	71½	5,000	71	4, 1871
5	Va. 6's. Reg. Old.	55¼	55¾	15,000	70½	4, 1871
1871						
Apr. 5	Va. 6's. Reg. Old.			5,000	57	Apr. 4, 1871
28	Va. 6's. New.	72	72½	5,000	72¼	27, 1871
28	Va. 6's. Old.	56½	56¼	10,000	56½	27, 1871
28	Va. 6's. Old.	70	71			27, 1871
May 11	Va. 6's. New.	71	72	2,000	71⅛	May 10, 1871

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES ON VIRGINIA STATE BONDS.

From the New York Herald, for dates on which Virginia exchanged her holdings in Internal Improvement Companies for her own Bonds. (New York Stock Exchange.)

Date of Newspaper. 1871		Bid.	Asked.	Sales.	At	Date.
May 11—Va. 6's. Old.		69	70			
11—Va. 6's. Reg.	Old.	56½	57			May 10, 1871
25—Va. 6's. Old.		68¾	69			10, 1871
25—Va. 6's. New.		74	**75**	5,000	74¾	24, 1871
25—Va. 6's. Reg.	Old.			1,000	57	24, 1871
June 11—Va. 6's. Old.		68½	70			24, 1871
11—Va. 6's. New.		73	74			June 10, 1871
11—Va. 6's. Reg.	Old.	55	56			10, 1871
14—Va. 6's. Old.		68.....	.69	5,000		10, 1871
14—Va. 6's. New.		73½	74	6,000	68¼	13, 1871
14—Va. 6's. Reg.	Old.	54	55		73½	13, 1871
July 12—Va. 6's. Old.		66¼	**66½**	500		13, 1871
12—Va. 6's. New.		73	**73½**		66½	July 11, 1871
12—Va. 6's. Reg.	Old.	55	55½			11, 1871
30—Va. 6's. Old.		64¼	65	15,000		11, 1871
30—Va. 6's. New.		72½	73		65	29, 1871
30—Va. 6's. Reg.	Old.	54	**55**			29, 1871
Aug. 13—Va. 6's. Old.		64¼	64¾	3,000		29, 1871
13—Va. 6's. New.		71½	72		64¾	Aug. 14, 1871
13—Va. 6's. Reg.	Old.	54	55			14, 1871
Sep. 1—Va. 6's. New.		70	71	2,500		14, 1871
1—Va. 6's. Old.		**63**	**64**	3,500	70	31, 1871
1—Va. 6's. Reg.	Old.	54¼	53		63	31, 1871
6—Va. 6's. Old.		63¼	64	1,000		31, 1871
					63¼	Sept. 5, 1871

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES ON VIRGINIA STATE BONDS,

From the New York Herald, for dates on which Virginia exchanged her holdings in Internal Improvement Companies for her own Bonds. (New York Stock Exchange.)

Date of Newspaper. 1871		Bid.	Asked.	Sales.	At	Date.
Sept. 6	Va. 6's. Deferred.			5,000	30	Sept. 5, 1871
6	Va. 6's. New.	70	72			5, 1871
6	Va. 6's. Reg. Old.	52	53			5, 1871
6	Va. 6's. Consols.	65½	66			5, 1871
24	Va. 6's. Old.			15,000	62¾	23, 1871
24	Va. 6's. Consolds.	64½	64¾	5,000	64½	23, 1871
24	Va. 6's. New.	64½	64¾	5,000	64½	23, 1871
24	Va. 6's. Old.	61½	62½			23, 1871
24	Va. 6's. New.	68	70			23, 1871
24	Va. 6's. Reg. Old.	52	53			23, 1871
Oct. 7	Va. 6's. Old.	61½	62			Oct. 6, 1871
7	Va. 6's. New.	68	70	5,000	64	6, 1871
7	Va. 6's. New.			7,000	64½	6, 1871
7	Va. 6's. Reg. Old.	52	54			6, 1871
17	Va. 6's. Deferred.			1,000	25½	16, 1871
17	Va. 6's. Old.	59½	60	2,000	59½	16, 1871
17	Va. 6's. New.	68	70			16, 1871
17	Va. 6's. Reg. Old.	50	52			16, 1871
17	Va. 6's. Consols.	60¾	62			16, 1871
28	Va. 6's. Old.	59½	60	5,000	59½	27, 1871
28	Va. 6's. Reg. Old.	49	53			27, 1871
1871						
Oct. 28	Va. 6's. Consols.	60¼	60⅝	2,000	60¼	Oct. 27, 1871
28	Va. 6's. Deferred.	24	25¼			27, 1871

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES ON VIRGINIA STATE BONDS,

From the New York Herald, for dates on which Virginia exchanged her holdings in Internal Improvement Companies for her own Bonds. (New York Stock Exchange.)

Date of Newspaper.		Bid.	Asked.	Sales.	At	Date.
1871						
Nov. 7—Va. 6's.	Consols.	64½	64¾	5,000	64½	Nov. 6, 1871
7—Va. 6's.	Old.	59	60			6, 1871
7—Va. 6's.	Reg. Old.	49	51			6, 1871
7—Va. 6's.	Deferred.	25½	27			6, 1871
Dec. 8—Va. 6's.	Consols.	65	65½	15,000	65¼	Dec. 7, 1871
8—Va. 6's.	New.			5,000	65	7, 1871
8—Va. 6's.	Old.	62	64			7. 1871
8—Va. 6's.	Reg. Old.	51	53			7, 1871
8—Va. 6's.	Deferred	27½	28			7, 1871
19—Va. 6's.	Consols.	60	60½	15,000	64	18, 1871
19—Va. 6's.	Consols.			13,000	64½	18, 1871
19—Va. 6's.	Old.	60	62			18, 1871
19—Va. 6's.	Reg. Old.	49	53			18, 1871
19—Va. 6's.	Deferred.	25	26			18, 1871
1872						
Oct. 17—Va. 6's.	Old.	44	50			Oct. 16, 1872
17—Va. 6's.	Reg. Old.	36	40			16, 1872
17—Va. 6's.	Consols.	54¼	54¾	5,000	54¼	16, 1872
17—Va. 6's.	Consols.			5,000	54½	16, 1872
17—Va. 6's.	Deferred scrip.	15	16	10,000	15½	16, 1872
18—Va. 6's.	Old.	44	48			17, 1872
18—Va. 6's.	Reg. Old.	37	40			17, 1872
18—Va. 6's.	Consols.	54	55			17, 1872
18—Va. 6's.	Deferred.	15½	16			17, 1872

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS AND SALES ON VIRGINIA STATE BONDS,

From the New York Herald, for dates on which Virginia exchanged her holdings in Internal Improvement Companies for her own Bonds. (New York Stock Exchange.)

Date of Newspaper. 1877		Bid.	Asked.	Sales.	At	Date.
Apr. 12	Va. 6's. New.			5,000	71¼	Apr. 11, 1877
Feb. 28	Va. 6's. Ex. Mat. Coupons.			3,200	62¾	Feb. 27, 1877
Mar. 3	Va. 6's. Coupons.			6,000	67	Mar. 2, 1877
Apr. 23	Va. 6's. Coupons		82			Apr. 6, 1877
23	Va. 6's. Consols.		83			13, 1877
23	Va. 6's. Consols.		82½			20, 1877
23	Va. 6's. Consols, Md.		45½			6, 1877
23	Va. 6's. Consols, Md.		45			13, 1877
23	Va. 6's. Consols. Md.		44			20, 1877

No. New York Heralds for the year 1867 can be found in the Virginia State Library. In the year 1868 the New York Heralds appear for only three months in the Library (October, November and December).

No quotations or sales are shown in the New York Herald for the month of July, 1884.

No other New York newspapers are obtainable in the Virginia State Library.

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS ON VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch for dates on which Virginia exchanged her holdings in Internal Improvement Companies, for her own Bonds.

Date of Newspaper. 1867	Bonds.	Bid.	Asked.	Exchange.	Date Quoted.
July 25	Va. 6's. New.		51	New York	July 24, 1867
Sep. 6	Va. Ex. Coupons.		49	No Exchange	
6	Va. Ex. Coupons. New.		48	mentioned	
18	Va. 6's. New.		50	New York	Sept. 5, 1867
18	Va. 6's. New.	49	50	New York	Sept. 17, 1867
25	Va. 6's. New.		48	New York	Sept. 17, 1867
Oct. 18	Va. 6's. New.		45⅛	New York	Sept. 24, 1867
19	Va. 6's. New.		45⅛	New York	Oct. 17, 1867
Nov. 14	Va. 6's.		45	New York	18, 1867
Dec. 11	Va. 6's.		46½	New York	Nov. 13, 1867
1868					Dec. 10, 1867
July 2	Va. 6's. Coupons.		58¼	New York	
2	Va. 6's. New.		57	New York	July 1, 1868
6	Va. 6's. New.		57⅜	New York	1, 1868
6	Va. Ex. Coupons.		59	New York	5, 1868
8	Va. 6's Coupons.		58½	New York	5, 1868
8	Va. 6's. New.		57¼	New York	7, 1868
8	Va. Old. Inscribed.	47	49¼	Baltimore	7, 1868
14	Va. Old. Inscribed.	47	49	Baltimore	7, 1868
14	Va. 1867.	45	46	Baltimore	13, 1868
14	Va. Coupons. New.	56½.	57	Baltimore	13, 1868
20	Va. 6's. New.		56	New York	13, 1868
21	Va. 6's. New.		54	New York	19, 1868
					20, 1868

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS ON VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch for dates on which Virginia exchanged her holdings in Internal Improvement Companies, for her own Bonds.

Date of Newspaper.	Bonds.	Bid.	Asked.	Exchange.	Date Quoted.
1868					
July 21	Va. Old. Inscribed.		45	Baltimore	July 20, 1868
21	Va. Coupons. Old.		55	Baltimore	20, 1868
21	Va. 6's. New.		54	Baltimore	20, 1868
26	Va. 6's. New.		53	New York	25, 1868
26	Va. Old. Inscribed.		45¼	Baltimore	25, 1868
26	Va. Coupons. Old.		54	Baltimore	25, 1868
26	Va. 6's. New.		53	Baltimore	25, 1868
31	Va. 6's. New.		54	New York	30, 1868
31	Va. 6's. New.		54¾	New York	30, 1868
31	Va. Old. Inscribed.	45	46	Baltimore	30, 1868
31	Va. Coupons. Old.	55¼		Baltimore	30, 1868
31	Va. Coupons. New.	54		Baltimore	30, 1868
Aug. 29	Va. 6's. Coupons.		53¼	New York	Aug. 28, 1868
29	Va. 6's. New.		53	New York	28, 1868
1868					
Aug. 29	Va. 6's. Old. Inscribed.	47	48	Baltimore	Aug. 28, 1868
29	Va. 1866.	47	50	Baltimore	28, 1868
31	Va. Coupons.		53¼	New York	30, 1868
31	Va. 6's. New.		53	New York	30, 1868
31	Va. 6's. Old. Inscribed.	47¼	47¾	Baltimore	30, 1868
1870					
Apr. 2	Va. 6's. Ex. Coupons.		70	New York	Apr. 1, 1870
2	Va. 6's. New.		70½	New York	1, 1870
2	Va. 6's. Old.	70¼	70½	New York	1, 1870
2	Va. 6's. New.	69⅛	70¾	New York	1, 1870

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS ON VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch for dates on which Virginia exchanged her holdings in Internal Improvement Companies, for her own Bonds.

Date of Newspaper.	Bonds.	Bid.	Asked.	Exchange.	Date Quoted.
1870					
Apr. 3	—Va. Ex. Coupons.	70	70	New York	Apr. 2, 1870
3	—Va. 6's. New.		68	New York	2, 1870
3	—Va. 6's. Old.	57⅛	58¼	Baltimore	2, 1870
3	—Va. 1866	65¼		Baltimore	2, 1870
3	—Va. 1861.	60	61	Baltimore	2, 1870
3	—Va. 1861. Old Coupons.	69	71	Baltimore	2, 1870
3	—Va. 6's. New.	69¼	71¾	Baltimore	2, 1870
Dec. 13	—Va. 6's. Old.		65	New York	Dec. 12, 1870
13	—Va. 6's. New.		63½	New York	12, 1870
13	—Va. 6's. Old.	51⅝	52½	Baltimore	12, 1870
13	—Va. 1866.		64	Baltimore	12, 1870
13	—Va. 1867.		60	Baltimore	12, 1870
13	—Va. Coupons. Old.		59	Baltimore	12, 1870
14	—Va. 6's. Old.		65½	New York	13, 1870
14	—Va. 6's. New.		63	New York	13, 1870
14	—Va. 6's. Old.	51¼	51⅞	Baltimore	13, 1870
14	—Va. 1867.	57	58	Baltimore	13, 1870
15	—Va. 6's. Old.		65	New York	14, 1870
15	—Va. 6's. New.		62½	New York	14, 1870
15	—Va. 6's. Old.	50½	51⅞	Baltimore	14, 1870
15	—Va. 1867.	56½	57	Baltimore	14, 1870
15	—Va. Coupons. Old.		70	Baltimore	14, 1870
1871					
Jan. 4	—Va. 1867.		56½	Baltimore	Jan. 3, 1871
4	—Va. 6's.	50	50½	Baltimore	3, 1871

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS ON VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch for dates on which Virginia exchanged her holdings in Internal Improvement Companies, for her own Bonds.

Date of Newspaper.	Bonds.	Bid.	Asked.	Exchange.	Date Quoted.
1871					
Jan. 14	Va. 6's.	51¼	51⅜	Baltimore	Jan. 13, 1871
14	Va. 1866.		61	Baltimore	13, 1871
Feb. 4	Va. 6's. Old.		64	New York	Feb. 4, 1871
4	Va. 6's. New.		60½	New York	4, 1871
4	Va. 6's. Old.	49¼	50	Baltimore	4, 1871
4	Va. 1866.	59¾	61	Baltimore	4, 1871
4	Va. 1867.	50	56½	Baltimore	4, 1871
Mar. 19	Va. 6's. Old.		67	New York	Mar. 18, 1871
19	Va. 6's. New.		69	New York	18, 1871
19	Va. 6's. Old.	53½	57¾	Baltimore	18, 1871
1871					
Mar. 19	Va. 1866.		66	Baltimore	Mar. 18, 1871
19	Va. 1867.	62½	65	Baltimore	18, 1871
31	Va. 6's. Old.		70½	New York	30, 1871
31	Va. 6's. New.		71	New York	30, 1871
31	Va. 6's. Old.	55½	55⅞	Baltimore	30, 1871
31	Va. 1866.	70	70⅝	Baltimore	30, 1871
31	Va. 1867.	65		Baltimore	30, 1871
Apr. 1	Va. 6's. Old.		73½	New York	31, 1871
1	Va. 6's. New.		71¼	New York	31, 1871
3	Va. 6's. Old.		73	New York	Apr. 1, 1871
3	Va. 6's. New.		73	New York	1, 1871
4	Va. 6's. Old.	72	72¼	New York	3, 1871
4	Va. 6's. New.		73	New York	3, 1871
4	Va. 6's. Old.	57⅝	58	Baltimore	4, 1871

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS ON VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch for dates on which Virginia exchanged her holdings in Internal Improvement Companies, for her own Bonds.

Date of Newspaper. 1871	Bonds.	Bid.	Asked.	Exchange.	Date Quoted.
Apr. 4	Va. 1866.	70	74	Baltimore	Apr. 3, 1871
4	Va. 1867.		69	Baltimore	3, 1871
4	Va. Coupons. Old.		75	Baltimore	3, 1871
May 19	Va. 6's. Old.		69	New York	May 18, 1871
19	Va. 6's. New.		71½	New York	18, 1871
June 22	Va. 6's. Old.		67	New York	June 21, 1871
22	Va. 6's. New.		72½	New York	21, 1871
22	Va. 6's. Old.	54½	55	Baltimore	21, 1871
22	Va. 1867.	72	75½	Baltimore	21, 1871
22	Va. Coupons. Old.	67	67½	Baltimore	21, 1871
23	Va. 6's. Old.		67	New York	22, 1871
23	Va. 6's. New.		72½	New York	22, 1871
Sep. 1	Va. 6's. Old.		62	New York	Aug. 31, 1871
1	Va. 6's. New.		70	New York	31, 1871
8	Va. 6's. Old.		63	New York	Sept. 7, 1871
8	Va. 6's. New.		70	New York	7, 1871
14	Va. 6's. Old.		63	New York	13, 1871
14	Va. 6's. New.		69½	New York	13, 1871
25	Va. 6's. Old.		62½	New York	23, 1871
25	Va. 6's. New.		63	New York	23, 1871
Oct. 7	Va. 6's. Old.		61	New York	Oct. 6, 1871
7	Va. 6's. New.		68	New York	6, 1871
7	Va. 6's. Old.	52¼	53	Baltimore	.... 6, 1871
7	Va. 1866.	67		Baltimore	6, 1871
7	Va. 1867.	66		Baltimore	6, 1871

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS ON VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch for dates on which Virginia exchanged her holdings in Internal Improvement Companies, for her own Bonds.

Date of Newspaper.	Bonds.	Bid.	Asked.	Exchange.	Date Quoted.
Dec. 30	Va. 6's. Old.		56	New York	Dec. 29, 1871
30	Va. 6's. New.		55	New York	29, 1871
..1872					
Sep. 19	Va. 6's. Old.		44½	New York	Sept. 18, 1872
19	Va. 6's. New.		50	New York	18, 1872
30	Va. 6's. Old.		44½	New York	28, 1872
30	Va. 6's. New.		48	New York	28, 1872
Oct. 4	Va. 6's. Old.		44½	New York	Oct. 3, 1872
4	Va. 6's. New.		47½	New York	3, 1872
1872					
Oct. 10	Va. 6's. Old.		44	New York	Oct. 9, 1872
10	Va. 6's. New.		47	New York	9, 1872
10	Va. Consols.		50⅛	New York	9, 1872
10	Va. Deferred.		15	New York	9, 1872
18	Va. 6's. Old.		44	New York	17, 1872
18	Va. 6's. New.		57	New York	17, 1872
18	Va. Consols.		53½	New York	17, 1872
18	Va. Deferred.		15	New York	17, 1872
18	Va. 6's. Old.		38½	Baltimore	17, 1872
18	Va. Consols.		51½	Baltimore	17, 1872
18	Va. 6's. Reg.		46	Baltimore	17, 1872
18	Va. 6's. New.		45	Baltimore	19, 1872
20	Va. 6's. Old.		44	New York	19, 1872
20	Va. 6's. New.		50	New York	19, 1872
20	Va. Consols.		53½	New York	

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS ON VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch for dates on which Virginia exchanged her holdings in Internal Improvement Companies, for her own Bonds.

Date of Newspaper.	Bonds.	Bid.	Asked.	Exchange.	Date Quoted.
1872					
Oct. 20	Va. Deferred.		15	New York	Oct. 19, 1872
20	Va. 6's. Old.		38	Baltimore	19, 1872
20	Va. Consols.		54	Baltimore	19, 1872
1877					
Apr. 13	Va. Consols.	70¾	71¾	Richmond	Apr. 12, 1877
13	Va. Consols. New.	42½	46½	Richmond	12, 1877
13	Va. Fundable.	30		Richmond	12, 1877
13	Va. Deferred.	5	5¾	Richmond	12, 1877
13	Va. Tax. Receivable Coupons.	84	84½	Richmond	12, 1877
13	Va. Deferred.		5	Baltimore	12, 1877
13	Va. Second Series.		42	Baltimore	12, 1877
14	Va. Consols.	71	71¾	Richmond	13, 1877
14	Va. Consols. New.	42	46	Richmond	13, 1877
14	Va. Deferred.	5		Richmond	13, 1877
14	Va. Interest Certificate.		20	Richmond	13, 1877
14	Tax Receivable Coupons.		84¾	Richmond	13, 1877
14	Va. Deferred.		4	Baltimore	13, 1877
14	Va. Consols.		7½	Baltimore	13, 1877
14	Va. Second Series.		42	Baltimore	13, 1877

PLAINTIFF'S REVISED EXHIBIT No. 2—(*Continued.*)

QUOTATIONS ON VIRGINIA STATE BONDS,

Reported in the Richmond Dispatch for dates on which Virginia exchanged her holdings in Internal Improvement Companies, for her own Bonds.

Date of Newspaper. 1884	Bonds.	Bid.	Asked.	Exchange.	Date Quoted.
July 9	—Va. 6's.	30		New York	July 8, 1884
9	—Va. Consols.	32½		New York	8, 1884
9	—Va. Consols.	33½		Baltimore	8, 1884
9	—Va. Past Due Coupons.	27		Baltimore	8, 1884
9	—Va. 10-40's.	31½		Baltimore	8, 1884
9	—Va. New 3's.	52		Baltimore	8, 1884

PLAINTIFF'S EXHIBIT No. 3.

Statement Showing Market Value of the Bonds and Cash on a Gold Basis Received by Virginia in Exchange for Securities as Per Class "C" in Defendant's Supplemental Answer.

	Claimed by West Virginia as Value. Jan. 1, 1861.	Value of Bonds Issued Prior to January 1, 1861. Par.		Market.
1. Orange and Alexandria Railroad Co.:				
Stock	$ 932,566 80			
Loan	398,670 60	$ 745,341 48	@ 44	$ 327,950 26
2. Richmond and Danville Railroad Co.:				
Stock	1,632,777 76	58,200 00	@ 65½	38,121 00
		460,017 98	@ 62	285,211 15
		16,000 00	@ 40	6,400 00
Loan	565,803 34	.....		.....
3 Richmond and Petersburg Railroad Co.:				
Stock	469,892 16	369,486 67	@ 66	243,861 20
Dividend bonds	33,408 00	.....		.....
4. Virginia Central Railroad Co.:				
Stock	2,481,115 26	.....		———
(Par plus interest):				
Loan	90,032 82	.....		.....
Dividend bonds	143,508 00	339,400 00	@ 73	247,762 00
5. Blue Ridge Railroad Co. (built by Virginia):	1,604,723 23	398,718 71	@ 70¼	280,099 89
6. Alexandria, Loudoun and Hampshire Railroad Co.:				
Stock	993,248 00	.....		.....
7. Winchester and Potomac Railroad Co.:				
Loan	83,333 33	45,000 00	@ 53¼	23,962 50
8. Virginia and Tennessee Railroad Co.:				
Loan	1,000,000 00	.....		.....
9. Southside Railroad Co.:				
Loan	800,000 00	.....		.....
10. Norfolk and Petersburg Railroad Co.:				
Loan	300,000 00	86,134 00	@ 40	34,453 60
11 Roanoke Navigation Co.:				
Stock	80,000 00	.....		.....
12. Alexandria Canal Co.:				
Stock	272,000 00	.....		.....
13. Upper Appomattox Co.:				
Stock	$ 56,500 00	.....		.....

PLAINTIFF'S EXHIBIT No. 3.

	Value of Bonds Issued Under the Act of 1866. Par		Market.	Cash Received. Face.	Cash Received, reduced to Gold.	Total.
	$ 129,365 83	@ 57	$ 73,738 53	$125,556 48	$ 39,974 19	$ 441,662 98
	31,960 41	@ 63	20,135 06			
	352,399 46	@ 70	246,679 62			
A.	33,600 00	@ 40	13,440 00	.....	.....	609,986 83
B.	126,903 34	@ 81½	103,426 22			
C.	438,900 00	@ 50	219,450 00	.....	.....	322,876 22
	161,771 03	@ 70	113,329 72	.....	.....	357,100 92
				33,408 00	33,408 00	33,408 00
	.....		.....	241,858 50	241,858 50	
				In 1888.		
	.....		.....	84,858 00		
				Jan. 1, 1863. @ 3 to 1		
	.....		.....		28,286 00	517,906 50
	176,202 77	@ 69½	122,460 92	8 96	8 96	402,569 77
	.....		.....	50,862 40	50,862 40	50,862 40
	66,130 90	@ 53	35,049 38	.....	.....	59,011 88
	.....		.....	.....	.....	nothing.
	.....		.....	.....	.....	nothing.
	65,390 49	@ 50	32,695 24	.....	.....	67,148 84
	.....		.....	3,832 00	3,832 00	3,832 00
	.....		.....	764 47	764 47	764 47
	$ 10,864 26	@ 52	$ 5,649 42	5,280 00	5,280 00	$ 10,929 42

PLAINTIFF'S EXHIBIT No. 3—(*Continued*)

	Claimed by West Virginia as Value. Jan. 1, 1861.	Value of Bonds Issued Prior to January 1, 1861. Par.	Market.
14. Dismal Swamp Co.:			
Stock	190,000 00	.....	.....
15. Washington College:			
Loan	2,000 00	.....	.....
16. Richmond Academy:			
Bond	400 00	.....	.....
17. United States Government:			
Claim	298,369 74	581,800 00	151,268 00
18. Selden, Withers Co.:			
Claim	132,842 74	.....	.....
19. Richmond, Fredericksburg and Potomac Railroad Co.:			
Dividend bond	149,984 00	.....	.....
	$12,711,175 78	$3,100,098 84	$1,639,089 60

A.—This amount included: Bonds under Act 1866, $3,500.00, and 10-40's under Act 1879, $30,100.00.

B.—This amount represents past due coupons which were resold by the Sinking Fund at 81 and 81½, and is part of the net settlement for the balance of the loan of $600,000.00

PLAINTIFF'S EXHIBIT No. 3—(*Continued*)

Value of Bonds Issued Under the Act of 1866.		Cash Received.	Cash Received, reduced to Gold.	
Par	Market.	Face.		Total.
.....	.....	9,935 99	9,935 99	9,935 99
.....	.....	2,000 00	2,000 00	2,000 00
.....	.....	400 00	400 00	400 00
.....	.....	5 50	5 50	151,273 50
.....	.....	132,842 74	132,842 74	132,842 74
.....	.....	149,984 00	19,111 11	19,111 11
$1,593,488 49	$ 985,964 11	$841,597 04	$568,569 86	$3,193,623 57

C.—This amount represents State bonds received by the Sinking Fund and cancelled. We have been unable to find a description of them, so take an average of fifty in reducing them as a liberal rate, as on July 8, 1884, Riddlebergers were quoted at 52 and other issues at from 30 to 37.

PLAINTIFF'S EXHIBIT No. 3—(*Continued*)

NOTE.

A.—These bonds were received by the sinking fund and cancelled. We have been unable to find a description of them, so take an average of 50 in reducing them as a liberal rate, as on July 8, 1884, Riddleberger bonds were quoted at 52, and other issues from 30 to 37.

B.—We have used an average of the market quotations between March and September, 1871, old bonds quoted from 70 in April to 60¼ in September, and new bonds from 67 in March to 70 in September.

C.—These bonds are quoted in the Richmond newspapers in the year 1871 at 73.

D.—We have used an average from quotations in July, November and December, 1867, and July, 1868, as some of the bonds appear to have been received during those months.

PLAINTIFF'S EXHIBIT No. 3—(*Continued.*)

BONDS.

	Par.	Market.
1. Orange and Alexandria Railroad Co.:		
Bonds of issues prior to January 1, 1861..	$ 745,341 48	
Bonds issued under act 1866.....	129,365 83	
	$ 874,707 31	
Market value at October 17, 1872:		
Old bonds at 44.....		$ 327,950 26
New bonds at 57.....		73,738 53
		$ 401,688 79
2. Richmond and Danville Railroad Co.:		
Bonds of issues prior to January 1, 1861...$	518,217 98	
Bonds of issues prior to January 1, 1861..	16,000 00	
Bonds issued under act 1866.....	384,359 87	
Bonds issued under act 1866.....	33,600 00	
	$ 952,177 85	
Market value at December 13, 1870:		
$58,200.00 old bonds at 65½.....		$ 38,121 00
$31,960.41 new bonds at 63.....		20,135 06
		$ 58,256 06
Market value at August 31, 1871:		
$460,017.98 old bonds at 62.....		$ 285,211 15
$352,399.46 new bonds at 70.....		246,679 62
		$ 531,890 77
Market value at April 13, 1877:		
$16,000.00 old bonds at 40.....		$ 6,400 00
$3,500.00 new bonds at 40.....		1,400 00
$30,100.00 10-40's of 1879 at 40.....		12,040 00
		$ 19,840 00

PLAINTIFF'S EXHIBIT No. 3—(*Continued.*)

Bonds (Continued.)

	Par.	Market.
2. Richmond and Danville Railroal Co. (loan):		
Past due coupons	$ 126,903 34	
State bonds	438,900 00	
	$ 565,803 34	
Market value at (see Note A):		
Past due coupons resold at 82½		$ 103,426 22
State bonds at 50 (estimated)		219,450 00
		$ 322,876 22
3. Richmond and Petersburg Railroad Co.:		
Bonds of issues prior to January 1, 1861	$ 369,486 67	
Bonds issued under act 1866	161,771 03	
	$ 531,257 70	
Market value at (see Note B):		
Old bonds at 66		$ 243,861 20
New bonds at 70		113,239 72
		$ 357,100 92
4. Virginia Central Railroad Co.:		
Bonds of issues prior to January 1, 1861	$ 339,400 00	
Market value at (see Note C):		
Old bonds at 73		$ 247,762 00
5. Blue Ridge Railroad Co.:		
Bonds of issues prior to January 1, 1861	$ 398,718 71	
Bonds issued under act of 1866	176,202 77	
	$ 574,921 48	
Market value at April 1, 1870:		
Old bonds at 70¼		$ 280,099 89
New bonds at 69½		122,460 92
		$ 402,560 81

PLAINTIFF'S EXHIBIT No. 3—(*Continued.*)

Bonds (Continued.)

	Par.	Market.
7. Winchester and Potomac Railroad Co.:		
Bonds of issues prior to January 1, 1861..	$ 45,000 00	
Bonds issued under act of 1866.....	66,130 90	
	$ 111,130 90	
Market value at August 28, 1868:		
Old bonds at 53¼.....		$ 23,962 50
New bonds at 53.....		35,049 38
		$ 59,011 88
10. Norfolk and Petersburg Railroad Co.:		
Bonds of issues prior to January 1, 1861..	$ 86,134 00	
Bonds issued under act of 1866.....	65,390 49	
	$ 151,524 49	
Market value at (see Note D):		
Old bonds at 40.....		$ 34,453 60
New bonds at 50.....		32,695 24
		$ 67,148 84
13. Upper Appomattox Company:		
Bonds issued under act of 1866.....$	10,864 26	
Market value at July 8, 1884:		
New bonds at 52.....		$ 5,649 42

PLAINTIFF'S EXHIBIT No. 3—(*Continued*)

CASH.

	Cash received Face.	Cash received reduced to gold.	Total.
1. Orange and Alexandria Railroad Company **$125,556 48		$ 39,974 19	$ 39,974 19
3. Richmond and Petersburg Railroad Company Nov. 7, 1861....	33,408 00	33,408 00	33,408 00
4. Virginia Central Railroad Company, January, 1863, at.....	84,858 00	28,286 00	
(3 Confed, to 1 gold, 1888)....	241,858 50	241,858 50	
			270,144 50
5. Blue Ridge Railroad Company, check reported by Steger in his report of 1874 as uncollected..	8 96	8 96	8 96
6. Alexandria, Loudoun and Hampshire Railroad Company, stock			
May 17, 1872.....	1,500 00		
March 19, 1873.....	3,000 00		
June 5, 1883.....	46,362 40		
	50,862 40	50,862 40	50,862 40

8 Virginia and Tennessee Railroad Company, loan (*included in $4,000,000.00 second mortgage given by Atlantic, Mississippi, & Ohio Railroad Company), nothing.

9. Southside Railroad Company (*included in $4,000,000.00 second mortgage given by Atlantic, Mississippi, & Ohio Railroad Company.) nothing.

**November 15, 1862.....	$ 18,627 48	@	$ 3 00	$ 6,209 16
December 29, 1862.....	16,929 00	@	3 00	5,643 00
January 28, 1863.....	14,000 00	@	3 00	4,666 67
June 23, 1863.....	14,000 00	@	7 50	1,866 66
January 16, 1864.....	14,000 00	@	20 25	691 35
September 8, 1864.....	14,000 00	@	25 00	560 00
December 31, 1864.....	14,000 00	@	41 50	337 35
August 26, 1868.....	20,000 00	@	face	20,000 00
	$125,556 48			$ 39,974 19

PLAINTIFF'S EXHIBIT No. 3—(*Continued.*)

Cash (Continued.)

	Cash received Face.	Cash received reduced to gold.	Total.
11. Roanoke Navigation Company, September 30, 1882.....	$ 3,832 00	$ 3,832 00	$ 3,832 00
12. Alexandria Canal Company, July 1, 1887	764 47	764 47	764 47
13. Upper Appomattox Company, February 4, 1875.....	3,000 00		
March 29, 1881.....	2,280 00		
		5,280 00	5,280 00
14. Dismal Swamp Canal Company, September 30, 1868.....	9,935 99	9,935 99	9,935 99
15. Loan to Washington College, January 1, 1896.....	2,000 00	2,000 00	2,000 00
16. Richmond Academy bonds, February 5, 1896.....	400 00	400 00	400 00
17. Claim against United States government, April 4, 1903.....	5 50	5 50	5 50
18. Claim against Selden-Withers Co., sundry dates from April 26, 1866, to August 20, 1891, both dates included	132,842 74	132,842 74	132,842 74
19. Richmond, Fredericksburg and Potomac Railroad Company, March 13, 1863, at $5.00.....	27,520 00		
Confederate to $1.00 gold.....		5,504 00	
July 1, 1863.....	122,464 00		
At $9.00 Confederate to $1 gold		13,607 11	19,111 11

*Nos. 8 and 9 are included in sale to the Atlantic, Mississippi and Ohio Railroad Company, defendant's answer, page 57, Class "F."

PLAINTIFF'S EXHIBIT No. 4.

Summary of Defendant's Class "D"—1861—

(Exhibit No. 4, page 46 in record of August and September 1914 hearing) reduced to actual values as per page 647 of the original record.

All payments in 1861 taken at face.

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1. Orange and Alexandria Railroad Co.:				
Dividend bonds, paid to State March 26, 1864, $31,604.09, at $23¾ Confederate to $1.00 gold.		$ 1,330 70		
Interest on loan paid to State, October 20 and 25, 1862, $20,336.00, at $2.50 Confederate, to $1.00 gold		8,134 80		
Overpayment		1 02		
				$ 9,466 52
2. Richmond and Danville Railroad Co.:				
Interest on loan paid to State, February 28, 1861				10,500 00
3. Richmond and Petersburg Railroad Co.:				
Dividend paid to State February 28, 1861				9,640 00
4. Virginia Central Railroad Co.:				
Interest on loan paid to State January 2 1861		1,159 34		
Interest on dividend bond paid to State January 19, 1861		5,959 80		
				7,119 14
5. Winchester and Potomac Railroad Co.:				
Annuity payment to State in November, 1861				833 33
6. Richmond, Fredericksburg and Potomac R. R. Co.:				
Interest on dividend bonds paid to State January 16, 1861				4,467 41
7. Virginia and Tennessee Railroad Co.:				
Seven per cent. payments on account of loan, $1,000,000.00, $280,000.00 as under—				
1861	$ 35,605 57 at face		$35,605 57	
1862, January	14,394 43 at $ 1.25		11,515 54	
1863, February	90,000 00 at 4.00		22,500 00	
1863, March	50,000 00 at 5.00		10,000 00	
1863, May	55,000 00 at 5.75		9,565 22	
1863, August	35,000 00 at 12.50		4,375 00	
	$280,000 00			93,561 33

PLAINTIFF'S EXHIBIT No. 4—*Continued.*

8. Southside Railroad Co.:
Seven per cent. payments on account of loan $800,000.00, $264,500.00 as under—

1862, July	$ 28,000 00	at	$1.50	$18,666 67	
1862, September	56,000 00	at	2.50	22,400 00	
1862, October	56,000 00	at	2.50	22,400 00	
1862, November	12,500 00	at	3.00	4,166 67	
1863, January	28,000 00	at	3.00	9,333 33	
1863, July	28,000 00	at	9.00	3,111 11	
1863, July	56,000 00	at	9.00	6,222 22	
	$264,500 00				$86,300 00

9. Norfolk and Petersburg Railroad Co.:

Six per cent. payments of interest on $82,500.00 of stock, for two years, $9,900.00 as under		
1862, January, $9,900.00, at $1.25	7,920 00	
Six per cent. payments of interest on $300,000.00 loan for two years, $36,000.00 as under		
1864, January, $36,000.00, at $20.00	1,800 00	
		9,720 00

10. James River and Kanawha Co.:

On account of the semi-annual 3½ per cent. due December 15, 1860, on the amount of the registered stock issued under act March 23, 1860 (section 9)	250 00

11. Washington College (loan):

Interest on loan $2,000.00	60 00

12. Richmond Academy Bonds:

Interest on bonds, $400.00	12 00

13. United States Government (nothing)

14. The Farmers' Bank of Virginia:

Dividend due January 1, 1861; paid January 10, 1861	$12,327 00	
Dividend due January 1, 1861; paid January 10, 1861	3,689 00	
Dividend due January 1, 1861; paid February 9, 1861	17,675 00	
		33,691 00

15. Bank of Virginia:

Dividend due January 1, 1861; paid January 10, 1861	$20,567 75	
Dividend due January 1, 1861; paid January 10, 1861	5,196 45	
Dividend due January 1, 1861; paid January 16, 1861	7,962 50	
		33,726 70

PLAINTIFF'S EXHIBIT No. 4—*Continued.*

16. Bank of the Valley:		
Dividend due January 1, 1861; paid January 18, 1861	$12,950 00	
Dividend due January 1, 1861; paid January 18, 1861	3,664 50	
Dividend due January 1, 1861; paid January 18, 1861	322 00	
		16,936 50
17. Exchange Bank:		
Dividend due January 1, 1861; paid January 7, 1861	$29,708 00	
Dividend due January 1, 1861; paid January 7, 1861	934 50	
		30,642 50
18. Northwestern Bank:		
Dividend due January 1, 1861; paid January 4, 1861	$ 1,750 00	
Dividend due January 1, 1861; paid January 4, 1861	10,213 00	
Dividend due January 1, 1861; paid February 4, 1861	1,141 00	
		13,104 00
19. Fairmont Bank:		
Dividend due January 1, 1861; paid January 5, 1861		1,500 00
20. Blue Ridge Railroad Co.:		
Tolls for use of; Due and unpaid at January 1, 1861, and paid in cash January 19, 1861		1,534 62
		$363,065 12

PLAINTIFF'S EXHIBIT No. 4-A.

Summary of Defendant's Class "D"—1863.

Reduced to actual values as per page 647 of the Original Record.

1. Orange & Alexandria Railroad Co.				
March 26th, 1864—Received.....	$ 31,604 09			
at $23.75 Conf. to $1.00 gold.....			$	1,330 70
3. Richmond & Petersburg Railroad Co.				
July 31, 1863—Received	21,857 80			
at $9.00 Conf. to $1.00 gold.....				2,428 65
4. Virginia Central Railroad Co.				
July 21, 1863—Received	6,903 33			
at $9.00 Conf. to $1.00 gold		767 03		
November 3, 1863—Received	2,390 99			
at $16.00 Conf. to $1.00 gold.....		149 44		
				916 47
6. Richmond, Fredericksburg & Potomac Railroad Co.				
June 30, 1863—Received	3,631 69			
at $8.00 Conf. to $1.00 gold.....		453 96		
December 30, 1872—Received at face		17,556 68		
				18,010 64
7. Virginia & Tennessee Railroad Co.				
May 14, 1863—Received	15,469 61			
at $5.75 Conf. to $1.00 gold.....				2,690 37
8. Southside Railroad Company.				
Cash received as follows:				
July 6 and 29, 1863... 84,000 00	at 9 to 1 ..	9,333 33		
Aug. 1, 8 and 17, 1863. 112,000 00	at 12.50 to 1—			
Sept. 16, 1863 ..... 12,375 69	at 12.50 to 1..	9,950 05		
				19,283 38
$208,375 69				
9. Norfolk & Petersburg Railroad Co.				
Sept. 7, 1863—Received dividend	2,324 52			
at $12.50 to $1.00 gold.....		185 96		
Jan. 11, 1864—Received interest.	93,866 57			
at $20.25 to $1.00 gold		4,635 39		
				4,821 35
	$96,191 09			
11. Washington College.				
August 26, 1863—Received.....	56 35			
at $12.50 to $1.00 gold				4 51

PLAINTIFF'S EXHIBIT No. 4-A.

(Continued)

12. Richmond Academy Bonds.				
August 26, 1863—Received		11 26		
at $12.50 to $1.00 gold				90
13. United States Government	.....	.....	.....	.....
14. Farmers Bank of Virginia.				
Dividends received:				
December 19, 1863..	4,762 16	at 19 to 1..		250 64
15. Bank of Virginia.				
Dividends received:				
July 25, 1863.....	36,806 00	at 9 to 1...	4,089 55	
December 29, 1863..	1,168 88	at 19 to 1..	61 52	4.151 07
	$37,974 88			
16. Bank of the Valley.				
Dividends received:				
August 1, 1863.....	24,195 00	at $12.50 to 1		1,935 60
17. Exchange Bank.				
Dividends received:				
July 10, 1863.....	1,335 00	at 9 to 1...	148 34	
January 13, 1864...	7,050 14	at 20.25 to 1	348 15	496 49
	$ 8,385 14			
20. Blue Ridge Railroad Co.				
Tolls received:				
March 31, 1864		$30,266 80		
at $23.75 to $1. gold				1.274 40
				$ 57,595 17

PLAINTIFF'S EXHIBIT No. 5.

Acts of the Assembly 1865-1866; p. 79, chapter 9.

An Act to Provide for Funding the Interest Upon the Public Debt.

Passed March 2, 1866.

1. Be it enacted by the General Assembly, That the holders of the registered bonds of the State of Virginia, issued before the 17th day of April, eighteen hundred and sixty-one, be and they are hereby authorized to invest the interest due upon said bonds in registered bonds of the State bearing the same rate of interest as the principal of the bonds bears, and payable at any time the holder may elect, not less than ten nor more than thirty-four years from the date. Such bonds shall bear date on the first day of January, eighteen hundred and sixty-six, and may be issued for sums of one hundred dollars, or any multiple thereof, and shall be in the form and executed in the mode prescribed by law for the issue of certificates of registered debt of the State. But the interest upon the bonds so issued shall not be payable before the first day of July, eighteen hundred and sixty-seven.

2. The holders of the coupon bonds issued by the State before the seventeenth day of April, eighteen hundred and sixty-one, are hereby authorized to invest the interest due upon said bonds in either coupon or registered bonds of the State, bearing the same rate of interest as the principal of the bond bears; and the interest thereon, if the bond is a coupon, shall be payable at the place where the interest on the principal bond is provided to be paid; and such bond may be payable at any time the holder may elect, not less than ten nor more than thirty-four years from its date. Such bonds shall bear date on the first day of January, eighteen hundred and sixty-six; and if coupon, may be issued for sums of five hundred dollars, or any multiple thereof; or if registered, in sums of one hundred dollars, or any multiple thereof; and shall be in the form and executed in the mode prescribed by law for the issue of the certificates of registered or coupon bonds of the State. But the interest upon the bonds so issued shall not be payable before the first day of July, eighteen hundred and sixty-seven.

3. For any fractional sums of interest which cannot be invested under the two preceding sections of this act, certificates shall be issued in the form prescribed by law for the issue of certificates of the registered debt of the State, payable in two, three or four years, with such interest thereon as is provided in the case of the bonds hereinbefore authorized to be issued.

4. The holders of any of the bonds of the State issued before the seventeenth day of April, eighteen hundred and sixty-one, may, after the first day of January, eighteen hundred and sixty-seven, invest the interest which shall be then due thereon, and not invested under the first and second sections of this act; and may also invest the certificates of debt, mentioned in the preceding section, in bonds of the State, bearing date of the first of January, eighteen hundred and sixty-seven, in all respects similar to the

PLAINTIFF'S EXHIBIT No. 5.

Continued.

bonds provided for in the said first and second sections; and for any fractional sum of interest which cannot be so invested, certificates shall be issued as is provided in the preceding sections.

5. The holders of bonds of the State issued by the restored government of Virginia since the creation of the State of West Virginia, are hereby authorized to invest the interest now due thereon, which may become due up to the first of January, eighteen hundred and sixty-seven, in the same manner as is hereinbefore provided for the interest due or to become due upon the debt of the State of Virginia, incurred before the seventeenth of April, A. D. eighteen hundred and sixty-one.

6. The Auditor of Public Accounts shall have the bonds which shall be required, prepared, and shall perform all the duties under this act which are required by law to be performed by the Second Auditor in the issue of certificates of debt of the State.

7. This act shall be in force from its passage.

PLAINTIFF'S EXHIBIT No. 6.

DEED OF TRUST.

Given by the Atlantic, Mississippi & Ohio Railroad Company to the Board of Public Works of Virginia.

Mms. document, on file in the office of the Corporation Commission.

Whereas, by the terms of an Act of the General Assembly of Virginia, approved June 17, 1870, entitled, "An act to authorize the formation of the Atlantic, Mississippi & Ohio Railroad Company." The Board of Public Works of Virginia is empowered and directed to sell and transfer unto the President and Board of Directors of the said proposed Atlantic, Mississippi & Ohio Railroad Company, all the stock held by the Commonwealth of the said State in the Norfolk & Petersburg, in the South Side, in the Virginia & Tennessee, and in the Virginia & Kentucky Railroad Campanies, and

Whereas, the said Board of Public Works is further empowered and directed by the terms of the said act to sell and assign or convey unto the President and Board of Directors of the Atlantic, Mississippi & Ohio Railroad Company, all and whatever claims the State may hold or have against the aforesaid Norfolk & Petersburg, South Side, Virginia & Tennessee, and Virginia & Kentucky Railroad Companies for and in consideration that the Commonwealth is absolved from all and whatever liability by the reason of her unsatisfied subscription to the Virginia & Kentucky Railroad Company and of four millions of Virginia State bonds or at the option of the said company of money, to be paid by installments, as provided by the terms of the said act, and

Whereas, it is expressly provided by the terms of the said act that the payment of the consideration of the four millions aforesaid, and in the manner prescribed shall be secured by a second mortgage upon the property of the said Atlantic, Mississippi & Ohio Railroad Company, to be executed to the Board of Public Works of the State, such mortgage to be in all respects subordinate to such first mortgage or deed as the said Atlantic, Mississippi & Ohio Railroad Company may have made or may thereafter issue, provided the amount of such first mortgage or deed shall not exceed the sum of fifteen millions of dollars ($15,000,000.00); and

Whereas, the organization of the said proposed Atlantic, Mississippi & Ohio Railroad Company, on conformity with the provisions of the aforesaid act, has been duly certified; and

Whereas, the said Board of Public Works have this day sold, transferred and delivered over to the President and Board of Directors of the said Atlantic, Mississippi & Ohio Railroad Company the following: property—certificates of stock—held by the Commonwealth in the several aforesaid railroad companies; that is to say:

I. Stock certificate No. 39, of the Norfolk & Petersburg Railroad Company, for 8,175 shares of ordinary stock.

PLAINTIFF'S EXHIBIT No. 6.

Continued.

II. Stock certificate No. 40 of the Norfolk & Petersburg Railroad Company for 825 shares of stock, guaranteed to pay six per cent. (6%) annually.

III. Stock certificate No. 41 of the Norfolk & Petersburg Railroad Company, for 3,000 shares of stock, preferred, to pay seven per cent. (7%) annually.

IV. Stock certificate No. 881 of the South Side Railroad Company, for 8,035 shares of ordinary stock.

V. Stock certificate No. 1770 of the Virginia & Tennessee Railroad Company, for 17,168 shares of ordinary stock.

VI. Stock certificate No. 1771 of the Virginia & Tennessee Railroad Company, for 832 shares of stock, guaranteed to pay six per cent. (6%) annually.

VII. Stock certificate No. 1772 of the Virginia & Tennessee Railroad Company, for 5,000 shares of stock, preferred, to pay six per cent. (6%) annually.

VIII. Stock certificate No. 1 of the Virginia & Kentucky Railroad Company, for 1,034 shares of ordinary stock; and

Whereas, the said Board of Public Works have this day sold and by by these presents do hereby assign, convey and deliver over to the President and Board of Directors of the Atlantic, Mississippi & Ohio Railroad Company, all and whatever claims are held by the Commonwealth of Virginia against the several aforesaid Railroad Companies, as follows:

I. The note of the Norfolk & Petersburg Railroad Company, payable on demand for twenty-seven thousand two hundred and twenty-five dollars ($27,225.00), the same being for the amount of interest accrued and remaining unpaid as of July 1, 1870, on the 825 shares of guaranteed stock.

II. The note of the Norfolk & Petersburg Railroad Company, payable on demand for thirteen thousand two hundred and seventy-one and 41-100 dollars ($13,271.41), the same being for the amount of interest due and remaining unpaid as of the 1st day of July, 1870, upon the three hundred thousand dollars ($300,000.00) loan, so-called, made the said company under an act of Assembly, passed March 25, 1858.

III. The first mortgage bonds of the Norfolk & Petersburg Railroad Company bearing seven per cent. (7%) interest and numbered as follows, 381, 320, 383, 385, 60, 333, 66, and 384. And, the first mortgage bonds of the said railroad companies bearing eight per cent. interest and numbered as follows: 296. Amounting in the aggregate, principal the sum of four thousand five hundred dollars—such bonds being held by the Commonwealth as by the terms of the said Act of Assembly, passed March 25, 1858, and forming a part of the three hundred thousand dollars ($300,000.00) of bonds delivered to the State under the act aforesaid: one hundred and.

PLAINTIFF'S EXHIBIT No. 6.

Continued.

sixty-three thousand dollars ($163,000.00) of such bonds having heretofore been redeemed by the said Norfolk & Petersburg Railroad Company, leaving, as will appear, a balance of one hundred and thirty-two thousand and five hundred dollars ($89,000.00 of seven per cent (7%) and $43,500.00 of eight per cent. (8%) yet to be accounted for by the Commonwealth, from which said bonds are alleged to have been stolen, and against recovery of which balance from the said Norfolk & Petersburg Railroad Company, except by the Atlantic, Mississippi & Ohio Railroad Company, the Commonwealth is liable to protect and indemnify the said company and the Atlantic, Mississippi & Ohio Railroad Company, and secure to the latter the amount thereof).

IV. All and whatever claims, rights and privileges which are secured to the State of Virginia under and by reason of a deed executed by the South Side Railroad Company to the Board of Public Works to secure the payment of principal and interest of a loan of eight hundred thousand dollars ($800,000.00) made by the Commonwealth to the said railroad company under an Act of Assembly, passed February 5, 1853, and modified by an Act of Assembly, passed the 18th day of January, 1866.

V. The registered certificate of the Virginia & Tennessee Railroad Company No. 200 for seventy-nine thousand and forty dollars ($79,040.00), the same being the amount of interest accrued upon the 832 shares of guaranteed stock, as of July 1, 1870, held by the State in said company.

VI. All and whatever claims, rights and privileges which belong to the State of Virginia by virtue of a loan of one million of dollars ($1,000,000.00), made by the Commonwealth to the Virginia & Tennessee Railroad Company as by Act of Assembly passed February 9, 1853, and which are secured to the State under and by reason of a deed executed by the said Railroad Company to the Board of Public Works, to secure the payment of principal and interest of the same, and everything else which the Board of Public Works is directed to sell and transfer to the said Atlantic, Mississippi & Ohio Railroad Company by the aforesaid act of June 17, 1870, with the requirements of which the said Atlantic, Mississippi & Ohio Railroad Company has complied.

Now therefore, the indenture witnesseth that for and in consideration of the premises and of the assignment, transfer and delivery of the said stocks and claims, which is hereby acknowledged, the said Atlantic, Mississippi & Ohio Railroad Company do hereby covenant with the Board of Public Works of Virginia to stand siezed of all their property in trust—First, for the security of a loan not exceeding fifteen millions of dollars ($15,000,000.00), to be made in conformity with the provisions of the Act of General Assembly of Virginia, approved June 17, 1870, hereinbefore referred to, and after the said debt, not exceeding fifteen millions of dollars ($15,000,-

PLAINTIFF'S EXHIBIT No. 6.

Continued.

000.00) is fully secured, then in trust to secure the payment to the Commonwealth of Virginia of four millions of State bonds, rating the same at par, or in money, at the option of the Atlantic, Mississippi & Ohio Railroad Company in the times and manner prescribed by the terms of the Act of Assembly, approved the 17th of June, 1870, the intention being to make the lien of the deed or mortgage which shall remain for the security of the said loan not exceeding fifteen millions of dollars ($15,000,000.00) prior to the lien of the mortgage to the State for the said four millions of dollars, payable as aforesaid in State bonds or in money, out of which sum of four millions, so payable to the State of Virginia, there is to be deducted whatever amount is lost to the said Atlantic, Mississippi & Ohio Railroad Company, or to the Norfolk & Petersburg Railroad Company by the failure of the State to deliver to the Atlantic, Mississippi & Ohio Railroad Company the lost bonds of the Norfolk & Petersburg Railroad Company hereinbefore referred to.

In testimony whereof the corporate name of the Atlantic, Mississippi & Ohio Railroad Company has been hereunto subscribed and the seal of the said corporation has been hereunto affixed by its president, and these presents subscribed and the seal of the Commonwealth of Virginia hereunto affixed by its Board of Public Works.

All on this 22nd day of December, 1870.

(Seal) A. M. & O. R. R. Co.
THE ATLANTIC, MISSISSIPPI & OHIO RAILROAD COMPANY,
By WILLIAM MAHONE, President.

(Seal) B. P. W.
WILLIAM F. TAYLOR, Auditor Public Accounts.
GEORGE RYE, Treasurer.
C. C. WALKER, Governor.

Attest:
THOS. H. DeWITT,
Secretary Board of Public Works.

(Seal) Lynchburg, Va.
JOHN T. MORRELL, Notary Public.

(Seal) Richmond, Va.
JOHN S. RADY, Notary Public.

PLAINTIFF'S EXHIBIT No. 7.

Summary of West Virginia's Claim Under Classes B, E, and G, as of January 1, 1861, *on the Basis of the Market Value of the Securities, with the Exception of the Manassas Gap Railroad Company Under Class "G" for Which No Quotation Has Been Found.*

Class "B"—Richmond, Fredericksburg and Potomac Railroad Company @ Market Quotation on January 4, 1861, ... 76½	$	210,528 00
Class "E"—Banks, as per Sub-Schedule XX		3,294,375 00
Class "G"—James River and Kanawha Company. @ Market Quotation on December 14, 1860 .....18½		1,924,000 00
Class "G"—Manassas Gap Railroad Company, No Quotation Found . .		
	$	5,428,903 00

Total Amount of West Virginia's Claim as of January 1, 1861, *Taking Cash at Face, Securities Under Class "C" as Per Plaintiff's Exhibit No.* 3, *Income as Per Plaintiff's Exhibit No.* 4, *Securities Under Class "F" at* $500,000.00, *and Classes "B," "E," and "G," at Market as Per Preceding Page.*

Class "A"—Cash	$	1,102,036 16
Class "C"—As per Plaintiff's Exhibit, No. 3		3,193,623 57
Class "D"—As per Plaintiff's Exhibit, No. 4		363,065 12
Class "F"— . .		500,000 00
Classes "B," "E," and "G" . . . As per preceding page.		5,428,903 00
	$	10,587,627 85

PLAINTIFF'S EXHIBIT No. 7.

Sub-Schedule XX.

CLASS "C."

BANKS.

	Par of Stock Owned by Virginia at Jan. 1, 1861.	Market Quotations.	
Farmers Bank of Virginia.	$ 962,600 00	January 4, 1861—Par...	$ 962,600 00
Bank of Virginia	963,620 00	January 4, 1861—Par...	963,620 00
Bank of the Valley	483,900 00	No quotation, taken at—Par	483,900 00
Exchange Bank	875,500 00	January 4, 1861—@ 101.	884,255 00
Northwestern Bank	374,400 00		.....
Fairmont Bank	50,000 00		.....
	$3,710,020 00		$3,294,375 00

PLAINTIFF'S EXHIBIT No. 8.

Summary of West Virginia's Claim Under Classes "B," "E," and "G," as of June 20, 1863, on the Basis of the Market Value of the Securities, with the Exception of the Manassas Gap Railroad Company, Under Class "G," for Which No Quotation Has Been Found.

Class "B"—Richmond, Fredericksburg and Potomac Railroad Company, $275,200.00 @ 110, May 27, 1863, @ $7.50 to $1.00—gold	$	40,362 67
Class "E"—Banks, as per Sub-Schedule XXX	$	483,292 32
Class "G"—James River and Kanawha Company, $10,400,000.00 @ 22, Market Value June 16, 1863, reduced @ $7.50 to $1.00 gold	$	305,066 67
Class "G"—Manassas Gap Railroad Company, No Quotation Found		
	$	828,721 66

PLAINTIFF'S EXHIBIT No. 8.

Total Amount of West Virginia's Claim as of June 20, 1863, Taking Cash at $7.50 Confederate to $1.00 Gold, Income Under Class D as per Defendant's Exhibit 4-A, Securities Under Classes C and F at Confederate Market Quotations Reduced to Gold at $7.50 Confederate to $1.00 Gold, and Classes B, E and G at Market, as per preceding page.

No quotations were found for securities except

Orange & Alexandria Railroad Company	Class C
Richmond & Danville Railroad Company	Class C
Richmond & Petersburg Railroad Company	Class C
Virginia Central Railroad Company	Class C
Virginia & Tennessee Railroad Company	Class F

Class A—Cash	$2,459,216 29	at $7.50 Confederate to $1.00 Gold	$ 327,895 51
Classes C & F, as per Schedule XXXX			918,822 24
Class D, as per Defendant's Exhibit 4-A			57,595 17
Classes B, E, and G, as per preceding sheet			828,721 66
			$2,133,034 58

PLAINTIFF'S EXHIBIT No. 8.

Sub. Schedule XXX.

CLASS "E."

BANKS—1863.

	Par of stock owned by Virginia at June 20, 1863.	Market Quotations.	
Bank of the Valley	$ 483,900 00	No quotations. Taken at par and reduced at $7.50 Conf. to $1.00 gold	$ 64,520 00
Bank of Virginia	963,620 00	May 27, 1863 at 87½ reduced at $7.50 Conf. to $1.00 gold	112,422 33
Farmers Bank of Virginia.	962,600 00	May 27, 1863, at 125, reduced at $7.50 Conf. to $1.00 gold	160,433 33
Exchange Bank	875,500 00	May 27, 1863, at 125, reduced at $7.50 Conf. to $1.00 gold	145,916 66
Northwestern Bank	374,400 00		
Fairmont Bank	50,000 00		
			$ 483,292 32

PLAINTIFF'S EXHIBIT No. 8.

Sub-Schedule XXXX.

CLASSES "C" AND "F."

Stock. 1863.

		Market Quotations.	
1. Orange and Alexandria Railroad Company ..	$ 874,500 00	April 18. 1863 @ 27½ @ $7.50 to $1.00 Gold ...	$ 32,065 00
2. Richmond and Danville Railroad Company ..	1,188,598 50	June 10, 1863 @ 125 @ $7.50 to $1.00 Gold ..	198,099 75
3. Richmond and Petersburg Railroad Company	385,600 00	June 10, 1863 @ 140 @ $7.50 to $1.00 Gold ..	71,978 66
4. Virginia Central Railroad Company	2,013,987 52	June 5. 1863 @ 100 @ $7.50 to $1.00 Gold ..	268,531 67
8. Virginia and Tennessee Railroad Company ..	2,270,525 00	July 24. 1863 @ 115 @ $7.50 to $1.00 Gold ..	348,147 16
			$ 918,822 24

PLAINTIFF'S EXHIBIT No. 9.

Statement of Interest Due October 1, 1914

upon

West Virginia's Share of the Debt

of the

Undivided State of Virginia

Unpaid and Outstanding January 1, 1861

Computed from January 1, 1861, according to the terms written in the bonds.

To this is added in the summary at the end, West Virginia's share of the principal of the bonds outstanding January 1, 1861, and her share of the interest accrued thereon.

Interest on the bonds redeemable at the pleasure of the General Assembly is calculated to October 1, 1914.

Interest on bonds having a definite maturity date is calculated up to, but not beyond, date of maturity.

Aggregate debt, at January 1, 1861, as per Joint Exhibit A-1, page 215 of the Record		$35,480,988 46
Less amount held by Sinking Fund	$1,329,557 20	
Board of Public Works	146,500 00	
Literary Fund	1,085,067 33	
		2,561,124 53
		$32,919,863 93
Accrued interest at January 1, 1861, as per Joint Exhibit A-1, page 215 of the Record	$1,053,067 63	
Less interest on holdings of Sinking Fund	$39,686 72	
Board of Public Works	4,395 00	
Literary Fund	31,776 02	
	75,857 74	
		977,209 89
Debt due to individuals, firms, corporations and others		$33,897,073 82
Amount decreed by the Supreme Court of the United States as payable by West Virginia		$ 7,182,507 45
Percentage of whole debt payable by West Virginia		21.2%

PLAINTIFF'S EXHIBIT No. 9—*Continued.*

Issues of Bonds Outstanding on January 1, 1861 as heretofore determined by the Court in this case

Grouped with respect to their Maturity dates and rate of Interest.

GROUP 1.

Six Per Cent. Registered Bonds Redeemable at the Pleasure of the General Assembly.

Alleghany and Huntersville Road	$ 2,700 00
Alexandria Canal Company	232,400 00
Berryville and Charlestown Turnpike Company	6,400 00
Beverly and Fairmount Road	16,600 00
Blue Ridge Railroad Company	32,200 00
City Point Railroad Company	49,600 00
Charlestown and Point Pleasant Turnpike Company	20,800 00
Charlestown and Point Pleasant Turnpike Company	5,800 00
Cacapon and North Branch Turnpike Company	11,000 00
Cumberland Gap Road	61,600 00
Clarksburg and Buckhannon Turnpike Company	8,000 00
Coal River Navigation Company	4,000 00
Dismal Swamp Canal Company	16,500 00
Dragon Swamp Navigation Company	1,464 00
Exchange Bank of Virginia and Northwestern Bank of Virginia	440,257 00
Giles, Fayette and Kanawha Turnpike Company	9,000 00
Goose Creek and Little River Navigation Company	7,000 00
Holliday Cove Turnpike Company	4,700 00
Hardy and Winchester Turnpike Company	15,500 00
Howardsville and Rockfish Turnpike Company	5,000 00
Hampshire and Morgan Turnpike Company	4,600 00
Ice's Ferry Road	1,358 00
Bank of Virginia	97,800 00
James River and Kanawha Company	1,773,431 59
James River and Kanawha Company	229,034 00
James River and Kanawha Company	1,205,100 00
James River and Kanawha Company	106,350 00
Louisa Railroad Company	166,150 00
Louisa Railroad Company	126,987 00
Louisa Railroad Company	12,900 00
Lewisburg and Blue Sulphur Springs Turnpike Company	1,000 00
Lafayette and English Ferry Turnpike Company	2,550 00
Lynchburg and Buffalo Springs Turnpike Company	8,500 00
Little Stone Gap Road	3,000 00
Marshall and Ohio Turnpike Company	9,000 00
Moorefield and North Branch Turnpike Company	10,700 00
Morgantown and Bridgeport Turnpike Company	1,040 00
Moorefield and Alleghany Turnpike Company	3,600 00
Natural Bridge Turnpike Company	6,100 00
North Carolina and Wytheville Road	100 00
Northwestern Turnpike Road	53 850 00
Northwestern Turnpike Road	6,600 00

PLAINTIFF'S EXHIBIT No. 9—*Continued.*

Northwestern Turnpike Road	2,000 00
Northwestern Turnpike Road	5,904 73
Northwestern Turnpike Road	2,100 00
Newmarket and Sperryville Turnpike Company	9,100 00
Ohio River and Maryland Line Road	12,000 00
Ohio River and Maryland Line Road	6,600 00
Orange and Alexandria Railroad Company	108,200 00
Petersburg Railroad Company	147,580 00
Portsmouth and Roanoke Railroad Company	64,950 00
Portsmouth and Roanoke Railroad Company	50,000 00
Pittsylvania, Franklin and Botetourt Turnpike Company	9,090 10
Richmond and Petersburg Railroad Company	175,900 00
Richmond and Petersburg Railroad Company	49,700 00
Rappahannock Company	12,900 00
Rappahannock Company	95,000 00
Red and Blue Sulphur Springs Turnpike Company	4,900 00
Rivanna Navigation Company	6,000 00
Richmond and Danville Railroad Company	378,090 00
Richlands to Kentucky Line Road	3,520 00
Rocky Mount Turnpike Company	9,800 00
Rich Patch Turnpike Company	1,100 00
Staunton and Parkersburg Road	1,900 00
Staunton and Parkersburg Road	16,510 00
Salem and Pepper's Ferry Turnpike Company	4,900 00
Salem and Newcastle Turnpike Company	3,875 00
Southwestern Turnpike Road	71,970 00
Southwestern Turnpike Road	123,162 00
Smith's River Navigation Company	2,600 00
Tazewell Courthouse and Fancy Gap Road	3,420 00
Upper Appomattox Company	37,900 00
Valley Turnpike Company	232,413 00
Valley Turnpike Company	22,664 00
Virginia and Maryland Bridge Company	5,200 00
Virginia-Tennessee Railroad Company	66,800 00
Winchester and Potomac Railroad Company	133,935 00
Wheeling, West Liberty and Bethany Turnpike Company	8,467 61
Weston and Fairmount Turnpike Company	4,000 00
Weston and Gauley Bridge Turnpike Company	5,000 00
Wellsburg and Bethany Turnpike Company	1,700 00
Williamsport Turnpike Company	800 00
Registered bonds	2,272,348 00
	$8,957,271 03

Elapsed time from January 1, 1861, to October 1, 1914, 53 years 9 months.

West Virginia's share, computed at 21.2% of the above	$1,398,941 46
Interest on West Virginia's share	6,124,086 21

PLAINTIFF S EXHIBIT No. 9—*Continued.*

GROUP 2.

Five Per Cent. Registered Bonds Redeemable at the Pleasure of the General Assembly.

Portsmouth and Roanoke Railroad Company	$104,000 00
Portsmouth and Roanoke Railroad Company	100,000 00
Richmond, Fredericksburg and Potomac Railroad Company	50,000 00
Winchester and Potomac Railroad Company	8,000 00
	$262,000 00

Elapsed time from January 1, 1861, to October 1, 1914, 53 years, 9 months.

West Virginia's share, computed at 21.2% of the above	$ 55,544 00
Interest on West Virginia's share	149,829 94

GROUP 3.

James River Annuity Six Per Cent.

James River Company	$95,560 00

Elapsed time from January 1, 1861, to October 1, 1914, 53 years, 9 months.

West Virginia's share, computed at 21.2% of the above	$20,246 00
Interest on West Virginia's share	65,293 35

GROUP 4.

Six Per Cent. Registered Bonds Redeemable in Twenty Years.

Staunton and Parkersburg, Loan No. 16, act of March 16, 1838—$106,713 25	
No interest charged to West Virginia on this loan.	
West Virginia's share, computed at 21.2% of the above	22,623 21

GROUP 5.

Six Per Cent. Registered Bonds Redeemable in Thirty-four Years.

James River and Kanawha Co., act March 23, 1860	$2,492,400 00	
West Virginia's proportion at 21.2%	$ 528,388 80	
Interest on West Virginia's share from January 1, 1861 to March 23, 1894		$1,053,332 51

Being thirty-four years after March 23, 1860. Elapsed time, thirty-three years, eighty-two days.

PLAINTIFF'S EXHIBIT No. 9—*Continued.*

(Loan No. 91.)

Registered bonds issued for redemption of warrants, act March 17, 1856	$2,698,700 00		
West Virginia's proportion at 21.2%.		$ 572,124 40	
Interest on West Virginia's share from January 1, 1861, to March 17, 1890			$1,002,644 11

Being thirty-four years after March 17, 1856. Elapsed time, twenty-nine years, seventy-six days.

(Loan No. 93.)

Registered bonds, act March 18, 1858	$ 398,900 00		
West Virginia's proportion at 21.2%.		$ 84,566 80	
Interest on West Virginia's share from January 1, 1861, to March 18, 1892			$ 158,364 86

Being thirty-four years after March 18, 1858. Elapsed time, thirty-one years, seventy-seven days.

(Loan No. 90.)

Registered bonds (coupons attached), acts March 29, 1851, May 25, 1852	$2,498,175 15		
West Virginia's proportion at 21.2%		$ 529,613 13	
Interest on West Virginia's share from January 1, 1861, to March 29, 1885			$ 770,304 15

Being thirty-four years after March 29, 1851. Elapsed time, twenty-four years, eighty-eight days.

Totals	$8,088,175 15	$1,714,693 13	$2,984,645 63

GROUP 6.

Six Per cent. Registered Bonds Redeemable in Thirty-five Years.

Coupon bonds, act of March 29, 1851	$13,082,500 00
West Virginia's share, computed at 21.2% of the above	2,773,490 00
Interest on West Virginia's share from January 1, 1861, to March 29, 1886	4,200,355 61

Being thirty-five years after March 29, 1851. Elapsed time, twenty-five years, eighty-eight days.

PLAINTIFF'S EXHIBIT No. 9—*Continued.*

GROUP 7.

Six Per Cent. Registered Bonds Redeemable in Thirtyfive Years.

(Loan No. 92.)

Registered bonds issued under act of March 18, 1856, in exchange for coupon bonds, theretofore issued under act of March 29, 1851	$ 512,500 00
West Virginia's share computed at 21.2% per of the above	108,650 00
Interest on West Virginia's share from January 1, 1861, to March 29, 1886	164,546 70

Being thirty-five years after March 29, 1851. Elapsed time, twenty-five years, eighty-eight days.

GROUP 8.

Five Per Cent. Sterling Coupon Bonds Redeemable in Thirty-five Years

Sterling coupon bonds, act of March 29, 1851	$1,815,204 50
West Virginia's share computed at 21.2% of the above	384,823 35
Interest on West Virginia's share from January 1, 1861, to March 29, 1886	485,668 20

Being thirty-five years after March 29, 1851. Elapsed time twenty-five years, eighty-eight days.

SUMMARY.

	Net total amount of bonds outstanding Jan. 1, 1861	Amount chargeable to West Virginia at 21.2%	Interest on West Virginia's share accrued since Jan. 1, 1861
Group 1	$ 8,957,271 03	$1,898,941 46	$ 6,124,086 21
Group 2	262,000 00	55,544 00	149,829 94
Group 3	95,500 00	20,246 00	65,293 35
Group 4	106,713 25	22,623 21	
Group 5	8,088,175 15	1,714,693 13	2,984,645 63
Group 6	13,082,500 00	2,773,490 00	4,200,355 61
Group 7	512,500 00	108,650 00	164,546 79
Group 8	1,815,204 50	384,823 35	485,668 20
	$32,919,863 93	$6,979,011 15	$14,174,425 64
Accrued interest January 1, 1861	977,209 89	203,496 31	
	$33,897,073 82	$7,182,507 46	

PLAINTIFF'S EXHIBIT No. 9.

Continued.

West Virginia's share of bonds outstanding January 1, 1861..	$ 6,979 011 15
West Virginia's share of accrued interest since January 1, 1861	14,174,425 64
West Virginia's share of interest accrued January 1, 1861....	203,496 31
	$21,356,933 10

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 9

To be attached to and printed with Plaintiff's Exhibit No. 9.

Computation showing the amount West Virginia would pay on her portion of the old debt of the Undivided State of Virginia, if calculated on the basis shown in the "Brief for the Bondholding Creditors," submitted at the October, 1913, term of the Supreme Court of the United States.

(See Schedule 5 in this Brief, page 125)

The Principal Sum Basis used in the following calculation (1), is the aggregate amount of Virginia's settlements to October 1, 1913, as shown in Plaintiff's Exhibit No. 22 (September, 1914).

Interest paid by Virginia, January 1, 1861, to October 1, 1913	$41,071,219 02
Bonds taken up by Virginia	12,141,591 49
New bonds issued and outstanding	24,645,075 23
	$77,857,885 74

The Supreme Court found West Virginia's share to be 23½%
The Supreme Court found Virginia's share to be 76½%

$$\text{Ratio } \frac{235}{765} \text{ - - } .30\ 7189$$

1. If West Virginia had treated her share in the same manner in which Virginia has, since January 1, 1861, her total payment in relation to Virginia's would be 30.7189% of $77,857,885.74, which is equivalent to 23.5% of the unscaled debt, or $23,917,086 06

2. If West Virginia had treated her portion of the debt, viz.: $7,182,507.46, as provided by her Constitution, the result would be as follows:

	5% (6.28118%)	6% (93.71882%)	Total (100%)
January 1, 1861 West. Va.'s portion*	$ 451,146 22	$ 6,731,361 24	$ 7,182,507 46
34 years interest (170%) not compounded	766,948 57 (204%)	13,731,976 93	14,498,925 50
	$1,218,094 79	$20,463,338 17	
Total amount at October 1, 1914			$21,681,432 96

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 9

(*Continued*)

*January 1, 1861			
Total 5%	$ 2,129,134 61	—.0628118	
Total 6%	31,767,939 21	—.9371882	
Exhibit No. 9	$33,897,073.82	100%	

3. If West Virginia scaled her share on a basis of the 1871 and 1892 Funding Act of Virginia:

Principal at January 1, 1861		$ 7,182,507 46
Interest to July 1, 1871:		
$ 451,146 22 at 5% for 10½ years.	$ 236,851 77	
6,731,361 24 at 6% for 10½ years.	4,240,757 58	
		$4,477,609 35
		$11,660,116 81
Interest to July 1, 1891:		
$ 687,997 99 at 5% for 20 years..	$ 687,997 99	
10,972,118 82 at 6% for 20 years..	13,166,542 58	
		$13,854,540 57
		$25,514,657 38
By the act of February 20, 1892, Virginia offered 19-28 of principal and interest in new Century Bonds; 19-28 of $25,514,657.38		$17,313,517 51
on which interest would be:		
2% for 10 years to July 1, 1901	$3,462,703 50	
3% for 13¼ years to October 1, 1914.	6,882,123 21	
		$10,344,826 71
Total amount at October 1, 1914		$27,658,344 22

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 9

(*Continued*)

4. If West Virginia scaled her share on a basis of the 1871, 1879 and 1892 Funding Acts of Virginia:			
Total amount of principal and interest at July 1, 1871, as in the preceding statement, $11,660,116.81, under the Act of March 28, 1879, new bonds (10-40's) were issued at 100% for principal			$11,660,116 81
and 50% for accrued interest July 1, 1871 to January 1, 1879:			
$ 687,997 99 at 5% for 7½ years.	$ 257,999 25		
10,972,118 82 at 6% for 7½ years.	4,937,453 47		
$11,660,116 81	$5,195,452 72		
50% of this accrued interest			2,597,726 36
Principal of New 10-40 Bonds			$14,257,843 17
Interest from January 1, 1879, to July 1, 1891:			
10 years at 3%	$4,277,352 95		
2½ years at 4%	1,425,784 32		
			$5,703,137 27
			$19,960,980 44
Under Act of February 20, 1892, principal and interest was reduced to 19-28ths, or			$13,544,951 04
Interest thereon, July 1, 1891, to October 1, 1914:			
10 years at 2%	$2,708,990 21		
13¼ years at 3%	5,384,117 83		
			$8,093,108 04
Total amount at October 1, 1914			$21,638,059 08

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 9

(Continued)

5. If West Virginia scaled her share on a basis of the 1892 Funding Act of Virginia:		
Principal at January 1, 1861:		
5%	$ 451,146 22	
6%	6,731,361 24	
		$7,182,507 46
Interest fro mJanuary 1, 1861, to July 1, 1891:		
$ 451,146 22 at 5% for 30½ years.	$ 687,997 98	
$6,731,361 24 at 6% for 30½ years.	12,318,391 07	
		$13,006,389 05
$7,182,507 46		
		$20,188,896 51
Under the Act of February 20, 1892, principal and interest were reduced to 19-28ths, or		$13,699,608 38
Interest thereon from July 1, 1891, to October 1, 1914:		
10 years at 2%	$2,739,921 68	
13¼ years at 3%	5,445,594 33	
		$8,185,516 01
Total amount at October 1, 1914		$21,885,124 39
6. If West Virginia scaled her share on a basis of the 1871 and 1882 Funding Acts of Virginia:		
Total amount of principal at July 1, 1871, as in calculation No. 3 and No. 4 (ante):		
5% Bonds	$ 687,997 99	
6% Bonds	10,972,118 82	
	$11,660,116 81	
Interest from July 1, 1871, to July 1, 1882:		
$ 687,997 99 at 5% for 11 years.	$ 378,398 89	
10,972,118 82 at 6% for 11 years.	7,241,598 42	
		$ 7,619,997 31

PLAINTIFF'S SUPPLEMENTARY EXHIBIT No. 9.

(*Continued*)

Under Act of February 14, 1882, new bonds were authorized for 53% of principal and 100% of accrued interest (Class A):		
53% of $11,660,116.81	$6,179,861 91	
100% of interest	7,619,997 31	
		$13,799,859 22
Interest from July 1, 1882 to October 1, 1914:		
32¼ years at 3%		$13,351,363 80
Total amount at October 1, 1914		$27,151,223 02
7. If West Virginia scaled her share on a basis of the 1871 and 1879 and 1882 Funding Acts of Virginia:		
Amount of principal at January 1, 1879, as in calculation No. 4 (ante)		$14 257,843 17
Interest from January 1, 1879, to July 1, 1882:		
3½ years at 3%		1,497,073 53
		$15,754,916 70
Under the Act of February 14, 1882, the bonds of 1879 (Class B) were fundable as follows:		
60% of Principal.		
100% of Interest.		
Principal —$14 257,843 17 at 60%	$8,554,705 90	
Interest — 1,497,073 53 at 100%	1,497,073 53	
		$10,051,779 43
Interest from July 1, 1882, to October 1, 1914:		
32¼ years at 3%		9,725,096 62
Total amount at October 1, 1914		$19,776,876 07

PLAINTIFF'S EXHIBIT No. 10.

14 Doc. No. 14.

Comparative State of the Farmers Bank of Virginia, including

	1860.	1861.
Debt outstanding	$6,027,315 59	$5,764,680 74
Sterling bills	4,349 66	5,375 84
Stocks	41,426 76	41,728 51
Specie	548,812 90	416,120 40
Notes of other banks in Virginia	395,462 54	583,276 29
Notes of banks out of the State.	21,518 96	9,987 00
Due by other banks	542,494 72	308,730 62
Real estate	190,312 79	193,696 46
Loan to Commonwealth		
In transitu between bank and branches		7,074 53
	$7,771,693 92	$7,330,670 30

PLAINTIFF'S EXHIBIT No. 10.

Doc. No. 14. 15

the Branches, on the first day of January 1860 *and the first day of January,* 1861.

	1860.	1861.
Capital stock	$3,150,900 00	$3,150,900 00
Circulation	1,769,872 00	1,532,578 00
Deposits	2,227,543 28	1,931,138 51
Due to other banks	130,358 17	240,885 56
Surplus and contingent fund	331,040 09	337,067 05
Profits of the institution	145,813 47	138,101 18
In transitu between bank and branches	16,166 91	
	$7,771,693 92	$7,330,670 30

PLAINTIFF'S EXHIBIT No. 10—(*Continued.*)

Tabular Statement of the Farmers Bank of Virginia, January, 1861.

	Capital.	Stocks used as Capital.	Bills Discounted. Payable at Bank and Branches.	Bills Discounted. Foreign Bills of Exchange payable out of the State.*	Bills Discounted. Domestic Bills of Exchange payable in the State.*	Bad Debts.	Doubtful Debts.	Specie.*	Circulation.*
1860—Nov. 1	.....	.....	.....	1,156,609 74	238,484 85	.....	.....	384,501 12	1,379,994
Dec. 1	.....	.....	.....	990,075 40	262,467 39	.....	.....	349,534 27	1,454,006
1861—Jan. 1	$3,150,900	41,728 51	4,618,091 40	896,854 55	249,734 79	70,773 96	45,437 34	416,120 40	1,532,578

	Notes on other banks. In the State.	Notes on other banks. Out of the State.	Value of Real Estate.	Contingent Fund.	Deposits.*	Loans to Directors.*	Aggregate Debt due by the Bank.*	Aggregate of Outstanding Debts due to the Bank.*
1861—Nov. 1	.....	.....	.....	.....	1,590,922 16	115,792 91	3,302,756 48	5,937,510 52
Dec. 1	.....	.....	.....	.....	1,421,722 22	116,214 93	3,217,225 40	5,870,859 33
Jan. 1	$583,276 20	9,987 00	193,696 46	337,067 05	1,931,138 51	130,066 93	3,831,843 53	6,273,670 44

*The acts of the legislature passed in 1856 (March 17th), extending the charters of most of the banks in the State require that each quarterly statement shall give the amounts on the first day of each month in the quarter, under the heads marked (*).

PLAINTIFF'S EXHIBIT No. 11.

6 Doc. No. 14.

Comparative State of the Bank of Virginia, including the

	1861	1860
Debt outstanding	$4,513,439 93	$4,749,351 29
Sterling bills		58 54
Stocks	64,721 30	102,371 30
Specie	376,355 54	518,545 58
Notes of other banks in Virginia	365,574 05	245,326 96
Notes of banks out of the State.	9,217 00	11,995 84
Due by other banks	235,562 53	575,781 82
Real estate	178,555 33	179,054 55
Treasurer's special deposit in bank notes, $297,121.10...		
In transitu between bank and branches	13,653 62	
Lost by robbery at Portsmouth in $100 notes	18,900 00	18,900 00
	$5,775,979 30	$6,401,385 88

PLAINTIFF'S EXHIBIT No. 11.

Doc. No. 14. 7

Branches, on the first day of January 1861 *and the first day of January* 1860

	1861.	1860.
Capital stock	$2,651,250 00	$2,651,250 00
Circulation	1,058,228 83	1,232,204 83
Deposits	1,545,968 64	1,974,148 95
Surplus and contingent fund.	322,549 39	337,455 84
Profits of the institution since 1st December, at branches.	9,685 93	12,758 02
Due to other banks	188,296 51	190,299 70
In transitu between bank and branches		3,268 54
Treasurer's special deposit in bank notes, $297,121.10....		
	$5,775,979 30	$6,401,385 88

PLAINTIFF'S EXHIBIT No. 11—(*Continued.*)
8 Doc. 14.

Tabular Statement of the Bank of Virginia, January, 1861.

Quarter ending January	Capital.	Bills Discounted.			Bad Debts.	Doubtful Debts.	Specie.*	Circulation.*
		Payable at Bank and Branches.*	Foreign Bills of Exch'ge, payable out of State.*	Domestic Bills of Exc'ge, payable in State.*				
1861.....	$2,661,250 00	.....	.....	.....	$6,412 00	$43,973 67	$	$ 989,639 83
1860—November 1	.....	.....	$1,031,491 26	.....	.....		413,023 25	981,639 83
December 1.	.....	.....	915,007 94	.....	.....		403,072 16	981,639 83
1861—January 1...	.....	.....	851,396 00	.....	.....		376,355 54	1,058,228 83

Quarter ending January, 1861..	Notes of Other Banks.		Value of Real Estate.	Contingent Fund.	Deposits.*	Loans to Directors.*	Aggregate Debt due by the Bank.*	Aggregate of Outstanding Debt due to the Bank.*
	In the State.	Out of the State.						
	$365,574 05	9,217 00	178,555 33	219,189 72				
1860—November 1					1,332,566 61	94,630 60	2,560,551 23	4,667,291 12
December 1					1,443,151 72	101,607 90	2,586,747 85	4,647,062 22
1861—January 1..					1,545,968 64	103,836 82	2,792,493 98	4,749,002 46

*The acts of the legislature, passed in 1856 (March 17 th), extending the charters of most of the banks in the State, require that each quarterly statement shall give the a mounts on the first day of each month in the quarter, under the heads marked (*).

PLAINTIFF'S EXHIBIT, No. 12

Doc. 14, pp. 32 and 33

Condition of the Bank of the Valley in Virginia, including its branches January 1, 1860.

Specie	$	397,101 41
Notes of banks incorporated by the State		64,598 57
Notes of banks incorporated elsewhere		11,544 80
Due from other banks		479,989 62
Notes discounted		1,623,071 72
Inland bills discounted		477,067 52
Virginia Treasury notes		5,400 00
Bond account		30,112 06
Stock purchased to secure a debt		8,000 00
Real estate		74,647 57
Apparent deficiency in the cash account of the late teller of the mother bank, arising from overdrafts, &c., permitted by him		19,843 91
		$3,191,377 18
Capital Stock	$	1,215,000 00
Notes in circulation		1,228,039 50
Due to other banks		298,322 38
Discount		7,935 43
Profit and loss and surplus fund		183,039 70
Deposits		259,040 12
		$3,191,377 18

In addition to the amount of ascertained liabilities as above, it is proper to add, that there may probably be due at the mother bank, to banks and depositors, about $30,000.00 for omissions on the part of the late teller to enter credits for remittances and deposits—the amount not yet ascertained.

PLAINTIFF'S EXHIBIT No. 12.

34 Doc. No. 14.

Condition of the Bank of the Valley in Virginia, including its

Specie	$ 313,180 63
Notes of banks incorporated by the State	33,161 92
Notes of banks incorporated elsewhere	41,461 39
Due from other banks	296,000 71
Notes discounted	1,692,805 66
Inland bills discounted	408,124 81
Bond account	29,212 06
Virginia State stock	5,400 00
Real estate	76,337 57
Apparent deficiency in the cash account of the late teller of the mother bank, arising from overdrafts, etc., permitted by him	13,522 12
	$2,909,206 87

	Nov. 1, 1860.	Dec. 1, 1860.	Jan. 1, 1861
Indebtedness of directors	$55,842 67	$38,387 35	$52,383 59

At the death of the late teller, which occurred on the 21st day of August, 1859, there were found among his papers various checks, drafts, etc., which he had improperly paid, and held up, there being no funds to the credit of the drawers at the time—many of which have since been paid; and the apparent deficiency on the 1st of October, 1859 has been thus reduced to $13,522.12; which balance, it is hoped, will be fully settled in the same way.

PLAINTIFF'S EXHIBIT No. 12.

Doc. No. 14. 35

branches, January 1, 1861.

Capital stock	$1,215,000 00
Notes in circulation	1,176,990 50
Due to other banks	120,409 81
Discount	7,298 33
Profit and loss and surplus fund	178,520 10
Deposits	210,988 13
	$2,909,206 87

In addition to the amount of ascertained liabilities, as stated above, it is proper to add, that there may probably be due at the mother bank, to banks and depositors, about $30,000, for omissions on the part of the late teller to enter credits for remittances and deposits—the precise amount not yet accurately ascertained. No ultimate loss, however, to the bank or his securities is apprehended.

PLAINTIFF'S EXHIBIT No. 13.

22 Doc. No. 14.

Comparative State of the Exchange Bank of Virginia, including

	1859.	1860.
Local loans, &c., outstanding	$5,377,248 47	$5,257,662 94
Sterling bills	7,242 77	21,999 08
Stocks, &c.	76,811 56	90,936 56
Specie	412,740 21	372,511 96
Notes of other banks in Virginia	166,819 78	431,758 89
Notes of banks out of the State.	17,092 38	13,402 21
Due by other banks	422,039 84	168,662 23
Real estate	174,278 21	179,381 12
	$6,654,273 22	$6,536,314 99

PLAINTIFF'S EXHIBIT No. 13.

Doc. No. 14. 23

the Branches, on the 31st December, 1859 and 31st December, 1860.

	1859	1860
Capital stock	$3,088,600 00	$3,137,100 00
Circulation	1,425,757 50	1,235,633 50
Deposits	1,618,332 49	1,689,635 46
Due to other banks	159,729 00	122,638 38
Contingent fund	205,047 67	191,584 24
Profits of the institution	154,585 04	150,586 05
In transitu, bank and branches	2,221 52	9,137 36
	$6,654,273 22	$6,536,314 99

PLAINTIFF'S EXHIBIT No. 13.
Doc. No. 14.

Tabular Statement of the Exchange Bank of Virginia, January, 1861.

	Capital.	Stocks used as Capital.	Bills Discounted.		Doubtful Debts.	Specie.	Circulation.
			Payable at Bank and Branches.	Inland and Foreign Bills of Exchange			
Quarter ending 31st December, 1860	$3,137,100 00	90,936 56	3,768,488 57	1,507,903 90*	4,800 00	372,511 96	1,235,633 50

*This includes bills payable at distant points in and out of the State, also sterling bills.

Quarter ending 31st December, 1860	Notes of Other Banks.		Value of Real Estate.	Contingent Fund.	Deposits.	Loans to Directors.	Aggregate Debt due by the Bank.	Aggregate of Debts due to the Bank.
	In the State.	Out of the State.						
	$431,758 89	13,402 21	179,381 12	191,584 24	1,689,635 46	96,836 54	3,047,907 34	5,984,421 91

PLAINTIFF'S EXHIBIT No. 14.

40 Doc. No. 14.

Statement of the Condition of the Northwestern Bank of Virginia, and Jeffersonville, on the first day of January, 1861, corresponding period

	Jan. 1, 1861.	Jan. 1, 1860.
Domestic debt	$ 823,130 86	$ 825,264 42
Bills of exchange	728,243 37	658,519 52
Stock of this bank	29,000 00	27,700 00
Other stocks	27,012 53	28,994 58
Banking houses and other real estate	145,869 92	128,735 42
Notes of Virginia banks	60,510 00	29,407 00
Notes of other banks, checks, &c.	31,939 43	38,350 82
Due by other banks and bankers	102,321 21	84,571 22
Coin	162,216 09	143,819 30
	$2,110,243 41	$1,965,362 28

PLAINTIFF'S EXHIBIT No. 14.

Doc. No. 14. 41

Virginia, including its Branches at Wellsburg, Parkersburg with a Comparative Statement of the same for the of the preceding year.

	Jan. 1, 1861.	Jan. 1, 1860.
Capital	$ 868,100 00	$ 868,100 00
Circulation	834,973 00	679,523 00
Deposits	228,023 46	237,488 72
Due to other banks and bankers	54,513 12	50,380 99
Contingent fund	63,732 96	87,816 02
Profits	40,116 41	28,273 96
In transit	20,784 46	13,779 59
	$2,110,243 41	$1,965,362 28

PLAINTIFF'S EXHIBIT No. 15.

156 Doc. No. 14.

Comparative Statement of the Fairmont

	1860.	1861.
Capital stock	$ 57,950 00	$ 107,950 00
Circulation	46,565 00	123,350 00
Deposits	10,051 01	7,198 76
Due to other banks	2,760 55	5,960 81
Contingent fund	4,180 44	7,418 46
Dividend unclaimed	2,655 50	706 00
Bonus and tax	299 40	
	$ 124,461 90	$ 252,584 03

PLAINTIFF'S EXHIBIT No. 15.

Doc. No. 14. 157

Bank—January 1860 *and* 1861.

	1860.	1861.
Debt outstanding	$ 40,381 39	$ 153,327 02
Stocks	61,750 00	61,750 00
Specie	10,020 87	27,491 38
Notes of banks in the State	3,409 00	3,490 00
Notes of banks out of the State	1,346 00	1,520 00
Real estate and personal property	4,027 84	4,027 84
Due from other banks	1,726 80	977 79
Interest due from State	1,800 00	
	$ 124,461 90	$ 252,584 03

PLAINTIFF'S EXHIBIT NO 15.

158

Doc. No. 14.

Condition of the Fairmont Bank.

	Oct., 1860.	Nov., 1860.	Dec., 1860.
Capital stock	$ 107,950 00	$ 107,950 00	$ 107,950 00
Stocks	61,750 00	61,750 00	61,750 00
Aggregate debt due by this bank	135,861 33	160,355 81	146,789 10
Outstanding debt due this bank	143,300 47	169,538 85	152,897 83
Circulation outstanding	106,580 00	128,905 00	130,950 00
Bills discounted: Foreign bills of exchange payable out of State	58,958 85	84,374 64	75,564 54
Domestic bills payable in the State	79,934 50	83,546 73	76,344 57
Bad debts	60 00	60 00	60 00
Doubtful debts	2,988 32	2,988 32	2,988 32
Specie	35,199 66	33,779 21	29,604 68
Exchange made	60 73	272 20	218 65
Notes of banks in this State	1,245 00	2,525 00	7,872 00
Notes of banks out of the State	3,418 00	1,850 00	3,790 00
Real estate and personal property	4,027 84	4,027 84	4,027 84
Contingent fund	3,040 67	3,040 67	3,040 67
Due to depositors	15,351 61	12,983 98	10,383 41
Loans to directors	6,165 13	6,915 13	6,469 13

PLAINTIFF'S EXHIBIT NO 15.

Continued.

Doc. No. 14. 159.

The undersigned directors of the Fairmont Bank, at Fairmont, Virginia, certify that the foregoing statements have been examined, and are believed to be correct.

T. G. WATSON,
E. P. STRAIGHT,
WM. HOOD.
AUSTIN MERRILL,
ISAAC HOLMAN,
E. CONAWAY.

Virginia—Marion County, to-wit:

This day Thomas F. Conaway, cashier of the Fairmont Bank, personally appeared before me, the undersigned, a notary public of said county, and made oath that the foregoing statements are correct, to the best of his knowledge and belief.

Given under my hand this 14th day of January, 1861.

A. S. HAYDEN, N. P.

PLAINTIFF'S EXHIBIT No. 16.

Statement of Old Unfunded Bonds of Virginia for which one-third as West Virginia's share.

Details taken from Second Auditor's Manuscript Record of School and College Bonds.

	Group No. 1	Group No. 3
Protestant Episcopal Theological Seminary & High School, in Virginia	$ 25,500 00	.....
Washington & Lee University	168,858 23	$ 50,000 00
Richmond College	17,026 19	.....
Emory and Henry College	600 00	.....
Lessburg Academy	1,000 00	.....
School Commissioners of Prince William Co.	200 00	.....
Hall's Free School	800 00	.....
University of Virginia	23,200 00	.....
Virginia Military Institute	600 00	.....
Randolph Macon College	2,400 00	.....
The Dawson Fund	9,287 61	.....
New London Academy	3,500 00	.....
College of William and Mary	18,900 00	11,000 00
Union Theological Seminary	45,395 00	.....
Hampden-Sidney College	59,400 00	.....
Virginia Agricultural & Mechanical College and Hampton Normal & Agricultural College	38,158 00	.....
	$ 414,825 03	$ 61,000 00
Interest from January 1,1872 to October 1, 1914, 42 years, 9 months	$1,064,026 20	$ 156,465 00

PLAINTIFF'S EXHIBIT No. 16.

Virginia issued her new bonds in full without setting off

Old bonds surrendered are grouped the same as shown in Plaintiff's Exhibit No. 9.

Group No. 5	Group No. 6	Group No. 7	Total
$ 29,700 00	$ 2,800 00	$ 1,900 00	$ 59,900 00
16,900 00	.....	1,000 00	236,758 23
21,247 00	3,600 00	2,000 00	43,873 19
.....	.....	.....	600 00
.....	1,500 00	.....	2,500 00
.....	1,200 00	.....	1,400 00
3,900 00	.....	100 00	4,800 00
7,000 00	11,400 00	7,000 00	48,600 00
8,100 00	7,400 00	.....	16,100 00
6,100 00	4,000 00	2,000 00	14,500 00
15,800 00	9,100 00	.....	34,187 61
3,000 00	.....	.....	6,500 00
6,000 00	.....	.....	35,900 00
38,200 00	10,900 00	22,500 00	116,995 00
11,150 00	.....	.....	70,550 00
8,150 00	119,370 00	6,000 00	171,678 00
$ 175,247 00	$ 171,270 00	$ 42,500 00	$ 864,842 03
$ 449,508 56	$ 439,307 55	$ 109,012 50	$2,218,319 81

PLAINTIFF'S EXHIBIT No. 17.

(Sections 9 and 10, of Chapter 143. An Act to authorize the formation of the Atlantic, Mississippi & Ohio Railroad Company. Approved June 17, 1870.)

9. That upon the formation of the said Atlantic, Mississippi & Ohio Railroad Company, as provided by the terms of this act, the Board of Public Works shall be and they are hereby empowered and directed to sell and transfer, for the consideration hereinafter mentioned, to the President and Board of Directors of the said Atlantic, Mississippi & Ohio Railroad Company, all the stock held by the Commonwealth in the said Norfolk & Petersburg, South Side, Virginia & Tennessee, and Virginia & Kentucky Railroads, to be cancelled or distributed among the stockholders of the said Atlantic, Mississippi & Ohio Railroad Company, in the discretion of the stockholders of the said company, as the stock of other stockholders than the State shall, as to each of the aforesaid companies, become absorbed in that of the said Atlantic, Mississippi & Ohio Railroad Company; and the said company shall be authorized to appoint such number of directors in the said Norfolk & Petersburg, South Side, Virginia & Tennessee, and Virginia & Kentucky Railroad Companies, so long as there shall remain any such distinctive organizations, as the State now appoints; and upon all such stock so sold and transferred by the State, the said Atlantic, Mississippi & Ohio Railroad Company, by such agent or agents as its President and Board of Directors may appoint, shall be entitled to vote at all meetings of the stockholders of the said Norfolk & Petersburg, South Side, Virginia & Tennessee, and Virginia & Kentucky Railroad Companies, which may be thereafter held, casting the same number of votes as the State of Virginia would be entitled to cast by law if such sale and transfer had not been made; and the Board of Public Works are further empowered and directed to sell and assign or convey unto the President and Board of Directors of the said Atlantic, Mississippi & Ohio Railroad Company, all and whatever claims the State may hold or have against the said Norfolk & Petersburg, South Side, Virginia and Tennessee, and Virginia & Kentucky Railroad Companies, and in and with the said Atlantic, Mississippi & Ohio Railroad Company, every claim, right and privilege shall as firmly vest, as to all such claims, as were vested in and with the Commonwealth on account of the same.

10. That in consideration of the sales and transfers of claims and stocks herein authorized and directed to be made, the Commonwealth of Virginia shall thereafter be absolved from all and whatever liability for and by reason of her unsatisfied subscriptions to the Virginia & Kentucky Railroad Company, which it is conditioned shall be completed within six years after the organization of the said Atlantic, Mississippi & Ohio Railroad Company; and, in addition, the Commonwealth of Virginia shall be entitled to receive four millions of Virginia bonds, or, at the option of the said company, of money, payable by annual installments of five hundred thousand dollars each, the first payment to be made during the year eighteen hundred

PLAINTIFF'S EXHIBIT No. 17

Continued.

and eighty-five; and such payment of the four millions of bonds as aforesaid to be secured by a second mortgage upon the property of the said Atlantic, Mississippi & Ohio Railroad Company, to be duly executed to the Board of Public Works of the State, immediately upon the surrender of all the aforesaid claims and stocks authorized to be sold. The said mortgage to be, in all respects, subordinate to such first mortgage or deed as the said Atlantic, Mississippi & Ohio Railroad Company may have made or may thereafter execute; provided, the amount of such first mortgage or deed shall not exceed the sum of fifteen millions of dollars; and provided further, that a part of such sum equal to the amount of all existing liens upon the roads to be consolidated, shall be set aside for and employed in the discharge of the same, and the remainder employed in the construction of the road to Cumberland Gap and the repairs and improvement of the whole line, so that at no time shall the obligations of the line, prior in dignity to such second mortgage to the State, exceed the said amount of fifteen millions of dollars; and provided further, that the said four millions of State bonds shall bear interest at six per cent. from the first day of July, eighteen hundred and eighty; the interest accruing thereon to be paid in lawful money of the United States, or, at the option of the Atlantic, Mississippi & Ohio Railroad Company, in State bonds, dollar for dollar; and provided further, that the said Atlantic, Mississippi and Ohio Railroad Company may, at their option, begin the annual payments in liquidation of said four millions of State bonds in the said year eighteen hundred and eighty; in which event the deferred payments shall carry interest from July first, eighteen hundred and eighty.

PLAINTIFF'S EXHIBIT No. 18.

EXTRACTS FROM ANNUAL REPORTS OF 1866.

Annual Report of Auditor of Public Accounts, September **30, 1866.**

Page 12.

"In 1860 there were sixty-six banks and branches in the State, with a capital of $15,520,550.00 and a circulation of $12,000,000.00. Of these, twenty were located in West Virginia, with a capital of $3,468,800.00; the residue, forty-six, were in this State, with a capital of $11,631,900.00. The amount of dividends and bonus paid into the treasury by these banks in 1860 was $368,853.43. Such of them as are located in this State have been ruined by circumstances over which they had no control. Their stocks are worthless, and their circulation selling in your streets at from ten to thirty cents on the dollar. The State owned of the stock of these banks, estimating the value per share at par, $3,760,020.00."

"State securities were selling in 1860 at par, or at a price very nearly approximating it. They are selling now at only forty cents on the dollar. Thus sixty per cent of the value of your stock and bonds held principally by your own citizens, has been destroyed by the fortunes of war."

Page 172.

COPY OF JOURNAL ENTRY.
(Internal Improvement Journal D.)

September 30, 1872.

175	Stocks, &c., sold, abandoned & To Sundries		
282	To Exchange Bank of Virginia Stock, to balance latter account, the same having been lost at the close of the war in April 1865.....$	26,700 00	
282	To Northwestern Bank of Virginia Stock to balance latter account, ditto	32,600 00	
282	To Bank of Valley Stock, to balance latter account, ditto	104,700 00	
282	To Bank of Virginia Stock, to balance latter account, ditto	587,650 00	
282	To Farmers Bank of Virginia Stock, to balance latter account, ditto	352,200 00	
			$1,103,850 00

PLAINTIFF'S EXHIBIT No. 19.

Copy of the Minutes of the Proceedings of the Board of Public Works.

Tuesday, February 4, 1868.

VIRGINIA & TENNESSEE RAILROAD.

Present: All the members.

Whereas, by Act of the General Assembly of Virginia, passed on the 9th day of February, 1853, entitled "An act authorizing a loan to the Virginia & Tennessee Railroad Company," a loan of one million of dollars to said company was authorized by the Board of Public Works for or on behalf of the Commonwealth, on the terms prescribed in said act, and in pursuance thereof, said loan was made and the said company, in order to secure the payment of the interest and principal thereof, did, on the 26th day of March 1853 execute to the said board a mortgage of that date which was duly recorded in the office of the Hustings Court of Lynchburg, and whereas, the semi-annual interest and principal of said debt due and payable to the Board of Public Works of Virginia on the 1st day of January, and of July in each year, being the sum of $35,000, on the first day of said months has not been paid in whole or in part since the first day of July, 1863, but remain wholly due and unpaid to the said board, so that at this time there remains due and unpaid thereon the sum of $315,000, exclusive of interest on such arrearages; and whereas, during the late war, and while the authorities of the State Government at Richmond City, adhering to the Confederate States, and while and when the said Railroad Company had no right to pay, and no officer of said State government had any right to receive payment of the principal or interest or any part thereof, or specified in the mortgage aforesaid, according to the terms thereof, or according to law, under and as recognized by the said State government or otherwise, in whatever currency or money it might be tendered, yet the Second Auditor of said State Government received from the president of the said railroad company in pretended satisfaction of the debt and interest, then not due but secured by said mortgage, certain sums in Confederate treasury notes at par, though grossly depreciated and almost worthless, to wit: On the 26th June, 1863, $200,000; on the 30th June, 1863, $300,000; on the 6th August, 1863, $100,000; on the 7th August, 1863, $100,000 and on the 11th September, 1863, $186,685—in all, $886,685, which act of the Second Auditor was unauthorized and illegal and void; and whereas, the Commissioners of the Sinking Fund, at a meeting on the 5th December, 1864, as appears by their records reciting that said act of said Second Auditor was unauthorized and that they had no control over said Confederate treasury notes other than to return it, ordered that said Second Auditor return said notes to said com-

PLAINTIFF'S EXHIBIT No. 19.

Continued.

pany by his warant on the Treasury "on account of the money paid into the Treasury without authority"; and whereas, in pursuance of said order, the said Second Auditor made and presented to the president of said railroad company, his warrant on the Treasury, and the said president refused to receive the same, by reason whereof, the said Confederate Treasury notes unlawfully received remained in the Treasury until they perished; and whereas, it is represented to this Board that the funds of the said Virginia & Tennessee Railroad Company have been attached at Knoxville, Tennessee, whereby the rights and interests of the Board and Commonwealth are jeoparded and may be injured, and it seems to the board necessary and proper that prompt measures should be adopted to protect the rights and interests aforesaid; it is therefore

Resolved, that the principal and interest on the said loan of $1,000,000 to the Virginia & Tennessee Railroad Company, falling due after the first day of July 1863, according to the terms of the mortgage of said company above mentioned, remain wholly unpaid and due to the Board of Public Works of Virginia, for the Commonwealth of Virginia, as also the interest on the several arrearages.

Resolved, that the receipt of the Confederate currency by the Second Auditor from the said Virginia & Tennessee Railroad Company or an officer thereof, above mentioned, was wholly unauthorized and illegal and void, and constitutes no payment of discharge of the indebtedness of the said company described in, and secured by the aforesaid mortgage.

Resolved, that the Governor be and is hereby authorized and requested to adopt such measures as he may deem proper for the protection of the rights and interests of the Board and the Commonwealth secured by the mortgage aforesaid, now jeoparded by the said attachments at Knoxville, and that he adopt such other measures as he may deem necessary and proper for securing the payment of the principal and interest due under said mortgage.

And then the board adjourned.

(Signed) F. H. PIERPONT.

EXTRACT FROM RECORD BOOK—SINKING FUND—PAGE 188.

December 5, 1864.

Present: All the Commissioners.

Whereas, it appears that the Virginia & Tennessee Railroad Company has paid into the Treasury of the State of Virginia to the credit of the Commissioners of the Sinking Fund, the sum of $886,685.47 in Confederate

PLAINTIFF'S EXHIBIT No. 19.

Continued.

States Treasury notes, on account of a debt of the company for money loaned to the same by the State; and whereas, it further appears that such payment into the Treasury was made without authority of the Board of said Commissioners of the Sinking Fund, and after a decision by this board, that they had no authority to receive it; and that this board has no further or other control over said money than to return it; it is, therefore,

Ordered, that the Second Auditor do issue his warrant on the Treasury in favor of said Virginia & Tennessee Railroad Company for eight hundred and eighty-six thousand six hundred and eighty-five dollars forty-seven cents in Confederate States Treasury notes on account of the money so paid into the Treasury without authority.

And then the Commissioners adjourned.

PLAINTIFF'S EXHIBIT No. 20.

Extract from

REPORT OF THE SECOND AUDITOR OF VIRGINIA.

For the

Fiscal Year Ended September 30, 1904.

Relating to the settlement of the claim of the Commonwealth of Virginia *vs.* the United States.

In my last annual report I referred to the auspicious fact that a settlement of the long standing counter claims between Virginia and the United States, and involving more than two million dollars, was rendered susceptible by an act of Congress authorizing the adjustment of such claims. I now make the gratifying announcement that this account has been settled finally, and in a manner which not only protects Virginia's interest as it then appeared, but has also removed the last possibility of any future litigation on the subject, which might affect and disturb most seriously the present satisfactory condition of our public debt, and the welfare of the State in other respects as well.

The settlement included in its terms not only the surrender by the United States Government of the entire amount of Virginia bonds which it held, amounting to $594,000.000, and its claim for past due interest at 6 per cent. from January 1, 1861, aggregating more than $2,000,000.00, but also, and which may be taken as evidence of finality—the payment to the State of the nominal balance of five dollars and fifty cents, which was established in the settlement to be due to Virginia.

The act which rendered the settlement of this account possible was approved on May 27, 1902, and is known as the "Omnibus Claims Act"; and as result of the vigilance, energy and persistent effort on the part of our senators in Congress, it was so framed as to include in its equitable provisions a settlement of the account between the United States and Virginia.

The impression has quite generally prevailed—and my opinion coincided therewith, before I had occasion to investigate the facts in the case—viz.: that Virginia had a definite and ascertained right of demand against the United States for advances made in aid of the war of 1812 with Great Britain. But the facts developed that she only had an equitable claim, based upon the asumption that by a different mode of calculation at the

PLAINTIFF'S EXHIBIT No. 20.

Continued.

time the amounts advanced were refunded, there would remain a large balance due the State. As a matter of fact, all the direct advancements were refunded during and at the close of the war of 1812. And in 1825 interest was allowed and paid to the extent of $178,500.00, which settlement was then and afterwards, regarded by the United States Government as a finality. Yet the State of Virginia never abandoned her claim for a resettlement of the account on a different basis, and sought at the hands of Congress a proper recognition of her demands. In the year 1857 the principle was recognized in the settlement of a similar claim with the State of Maryland, and thereby established a precedent. The Civil War, however, came on soon thereafter, and its results tended greatly to hinder the recognition of any such claim on the part of Virginia.

It will thus be perceived that Virginia's claim had no real legal existence till recognized by act of Congress—that was never done until the Omnibus Claims Act of May 27, 1902 was enacted, and even then its terms and provisions were such as to require strict legal proof of the items of our account. As it was, there is grave doubt if the claim would ever have been recognized but for the fact that the government held the bonds of the Commonwealth, and it would be an easy mode of adjustment of the counter-liabilities by allowing the one to offset the other.

PLAINTIFF'S EXHIBIT No. 21.

Condition. of the Orange and Alexandria R. R. Co., for the year 1861.

PRESIDENT'S, ENGINEER'S AND SUPERINTENDENT'S REPORT.

This exhibit was written in the record, pages 955 to 962, inclusive.

PLAINTIFF'S EXHIBIT No. 22.

Schedule Showing Sums Paid by Virginia as Indicated Below, From January 1, 1861, to September 30, 1913, on Account of the Old Debt of the Undivided State of Virginia, as It Existed January 1, 1861.

I.	Amount of interest paid, as shown by the records in the office of the Second Auditor of Virginia, from January 1, 1861, to September 30, 1913—	
	A.—Payments from January 1, 1861, to December 31, 1871, as shown in Plaintiff's Exhixit No. 1	$ 7,094,103 61
	B.—Payments from January 1, 1872, to September 30, 1872, as shown by Public Debt Cash Book B (not paged), Second Auditor's office. Sub. Schedule BB	562,648 30
	C.—Payments from October 1, 1872, to September 30, 1913, as shown by printed Annual Reports, Sub. Schedule CC	33,414,467 11
II.	Bonds heretofore paid off, taken up and retired by Virginia to September 30, 1913, as shown by the Second Auditor's report of September 30, 1913, page 23	12,141,591 49
III.	New bonds of Virginia issued for the portion of the debt as it existed January 1st, 1861, funded and assumed by her and still outstanding in the hands of outside holders as shown by the report of the Second Auditor of Virginia, dated October 1st, 1913, pages 13 and 50 (also Second Auditor's General Ledger, page 250)	24,645,075 23
	Total	$77,857,885 74

PLAINTIFF'S EXHIBIT No. 22—(*Continued*)

Sub-Schedule BB.

Cash Transactions of the Sinking Fund between December 31, 1871, *and September* 30, 1872.

Balance on hand in Sinking Fund at December 31, 1871, as shown by Public Debt Cash Book B (not paged), January, 1856—July, 1894		$ 162 68
Receipts as per same:		
January, 1872, to September 30, 1872—		
From Commonwealth	$581,082 00	
From Refunds	449 09	
		$581,531 09
		$581,693 77
Disbursed as per same:		
January, 1872, to September 30, 1872—		
Interest on Public Debt	$562,648 30	
Taxes retained on interest	16,351 94	
		$579,000 24
		$ 2,693 53
Add outstanding warrants as under		$ 5,807 74
		$ 8,501 27
Balance at September 30, 1872, as per Public Debt Cash Book B	$2,693 53	
Balance at September 30, 1872, as per Treasurer's Printed Statement of Payments of Interest on Public Debt, found on page 8 of the Report of the Treasurer for year ended September 30, 1872 (In annual reports of 1872)	8,501 27	
Outstanding warrants	$5,807 74	

PLAINTIFF'S EXHIBIT No. 22—(*Continued*)

Sub-Schedule CC.

The receipts below are found in the Annual Reports of the Treasurer of Virginia, under the following heading:

"The Treasurer of Virginia, in account with the Interest on the Public Debt."

Page.		
11	Receipts for Fiscal Year Ended September 30, 1873...	$ 965,650 99
8	Receipts for Fiscal Year Ended September 30, 1874...	1,673,494 98
9	Receipts for Fiscal Year Ended September 30, 1875...	1,378,749 46
9	Receipts for Fiscal Year Ended September 30, 1876...	1,103,254 62
9	Receipts for Fiscal Year Ended September 30, 1877...	1,060,064 54
9	Receipts for Fiscal Year Ended September 30, 1878...	1,303,490 25
9	Receipts for Fiscal Year Ended September 30, 1879...	1,412,901 42
9	Receipts for Fiscal Year Ended September 30, 1880...	1,250,684 29
9	Receipts for Fiscal Year Ended September 30, 1881...	1,003,643 78
9	Receipts for Fiscal Year Ended September 30, 1882...	825,698 97
9	Receipts for Fiscal Year Ended September 30, 1883...	331,390 27
9	Receipts for Fiscal Year Ended September 30, 1884...	565,065 77
12	Receipts for Fiscal Year Ended September 30, 1885...	419,337 08
14	Receipts for Fiscal Year Ended September 30, 1886...	417,466 34
12	Receipts for Fiscal Year Ended September 30, 1887...	382,469 34
12	Receipts for Fiscal Year Ended September 30, 1888...	533,269 34
12	Receipts for Fiscal Year Ended September 30, 1889...	534,276 24
10	Receipts for Fiscal Year Ended September 30, 1890...	442,926 14
10	Receipts for Fiscal Year Ended September 30, 1891. .	373,141 32
10	Receipts for Fiscal Year Ended September 30, 1892...	394,598 82
10	Receipts for Fiscal Year Ended September 30, 1893...	1,220,050 72
10	Receipts for Fiscal Year Ended September 30, 1894...	726,234 32
10	Receipts for Fiscal Year Ended September 30, 1895...	722,401 32
10	Receipts for Fiscal Year Ended September 30, 1896...	714,290 16
10	Receipts for Fiscal Year Ended September 30, 1897...	712,928 82
10	Receipts for Fiscal Year Ended September 30, 1898...	696,331 32
10	Receipts for Fiscal Year Ended September 30, 1899...	706,396 35
10	Receipts for Fiscal Year Ended September 30, 1900...	696,388 32
10	Receipts for Fiscal Year Ended September 30, 1901...	706,775 82
10	Receipts for Fiscal Year Ended September 30, 1902...	855,098 50
10	Receipts for Fiscal Year Ended September 30, 1903...	855,514 00
10	Receipts for Fiscal Year Ended September 30, 1904...	865,010 00
12	Receipts for Fiscal Year Ended September 30, 1905...	855,265 84

PLAINTIFF'S EXHIBIT No. 22—(*Continued*)

Sub-Schedule CC. (*Continued.*)

The Disbursements below are found in the Annual Reports of the Treasurer of Virginia, under the following heading:

"The Treasurer of Virginia in account with the Interest on the Public Debt."

Page.		
11	Disbursements for Fiscal Year Ended Sept. 30, 1873...	$ 936,863 85
8	Disbursements for Fiscal Year Ended Sept. 30, 1874...	1,672,053 09
9	Disbursements for Fiscal Year Ended Sept. 30, 1875...	1,417,389 50
9	Disbursements for Fiscal Year Ended Sept. 30, 1876...	1,102,005 36
9	Disbursements for Fiscal Year Ended Sept. 30, 1877...	1,061,059 79
9	Disbursements for Fiscal Year Ended Sept. 30, 1878...	1,303,212 80
9	Disbursements for Fiscal Year Ended Sept. 30, 1879...	1,413,440 98
9	Disbursements for Fiscal Year Ended Sept. 30, 1880...	1,250,678 56
9	Disbursements for Fiscal Year Ended Sept. 30, 1881...	1,000,829 31
9	Disbursements for Fiscal Year Ended Sept. 30, 1882...	827,171 16
9	Disbursements for Fiscal Year Ended Sept. 30, 1883...	313,935 17
9	Disbursements for Fiscal Year Ended Sept. 30, 1884...	573,656 23
12	Disbursements for Fiscal Year Ended Sept. 30, 1885...	415,977 39
14	Disbursements for Fiscal Year Ended Sept. 30, 1886...	415,295 05
13	Disbursements for Fiscal Year Ended Sept. 30, 1887...	389,540 66
13	Disbursements for Fiscal Year Ended Sept. 30, 1888...	538,720 23
13	Disbursements for Fiscal Year Ended Sept. 30, 1889...	535,473 46
11	Disbursements for Fiscal Year Ended Sept. 30, 1890...	440,449 73
11	Disbursements for Fiscal Year Ended Sept. 30, 1891...	369,240 55
11	Disbursements for Fiscal Year Ended Sept. 30, 1892...	387,774 56
11	Disbursements for Fiscal Year Ended Sept. 30, 1893...	1,205,542 07
11	Disbursements for Fiscal Year Ended Sept. 30, 1894...	750,598 21
11	Disbursements for Fiscal Year Ended Sept. 30, 1895...	726,660 44
11	Disbursements for Fiscal Year Ended Sept. 30, 1896...	713,194 42
11	Disbursements for Fiscal Year Ended Sept. 30, 1897...	705,898 48
11	Disbursements for Fiscal Year Ended Sept. 30, 1898...	699,485 77
11	Disbursements for Fiscal Year Ended Sept. 30, 1899...	707,568 03
11	Disbursements for Fiscal Year Ended Sept. 30, 1900...	683,509 73
11	Disbursements for Fiscal Year Ended Sept. 30, 1901...	708,980 86
11	Disbursements for Fiscal Year Ended Sept. 30, 1902...	843,896 37
11	Disbursements for Fiscal Year Ended Sept. 30, 1903...	841,972 75
11	Disbursements for Fiscal Year Ended Sept. 30, 1904...	844,938 42
13	Disbursements for Fiscal Year Ended Sept. 30, 1905...	906,807 52

PLAINTIFF'S EXHIBIT No. 22—(*Continued*)

Sub-Schedule CC. (*Continued.*)

The receipts below are found in the Annual Reports of the Treasurer of Virginia, under the following heading:

"*The Treasurer of Virginia, in account with the Interest on the Public Debt.*"

Page		
14	Receipts for Fiscal Year Ended September 30, 1906...	845,000 00
14	Receipts for Fiscal Year Ended September 30, 1907...	845,000 00
14	Receipts for Fiscal Year Ended September 30, 1908...	840,565 75
12	Receipts for Fiscal Year Ended September 30, 1909...	815,000 00
12	Receipts for Fiscal Year Ended September 30, 1910...	845,003 00
12	Receipts for Fiscal Year Ended September 30, 1911...	840,000 00
12	Receipts for Fiscal Year Ended September 30, 1912...	844,508 00
12	Receipts for Fiscal Year Ended September 30, 1913...	840,033 00
		$33,418,369 20
	Add error in carrying September 30, 1883, balance forward...	9 00
	Add error in footing receipts of report of 1885-6.....	3 00
	Amount received from October 1, 1872, to September 30, 1913.	$33,418,381 20
	Balance on hand October 1, 1872.....	8,501 27
		$33,426,882 47

PLAINTIFF'S EXHIBIT No. 22—(*Continued*)

Sub-Schedule CC (*Continued.*)

The Disbursements below are found in the Annual Reports of the Treasurer of Virginia, under the following heading:

"The Treasurer of Virginia in account with the Interest on the Public Debt."

Page		
15	—Disbursements for Fiscal Year Ended Sept. 30, 1906...	834,117 85
15	—Disbursements for Fiscal Year Ended Sept. 30, 1907...	836,362 07
15	—Disbursements for Fiscal Year Ended Sept. 30, 1908...	842,315 09
13	—Disbursements for Fiscal Year Ended Sept. 30, 1909...	838,460 94
13	—Disbursements for Fiscal Year Ended Sept. 30, 1910...	838,702 65
13	—Disbursements for Fiscal Year Ended Sept. 30, 1911...	846,169 77
13	—Disbursements for Fiscal Year Ended Sept. 30, 1912...	840,104 28
13	—Disbursements for Fiscal Year Ended Sept. 30, 1913...	834,413 96
Amount disbursed fromz October 1, 1872, to September 30, 1913		$33,414,467 11
Balance as per Treasurer's Report, September 30, 1913....		12,415 36
		$33,426,882 47

PLAINTIFF'S EXHIBIT No. 23.

(pp. 198-199 of Record of suit of Terrell & Bocock, Trustees, vs. Richmond & Alleghany Railroad Company.)

No. 247.

SALE OF RICHMOND & ALLEGHANY RAILROAD CONFIRMED.

Report of E. R. LELAND, Special Commissioner.

In the Circuit Court of the City of Richmond.

Terrell & Bocock, Trustees,
vs.
Richmond & Alleghany R. R. Co., Defendants.

and

Alexander & Ellyson, Trustees,
vs.
Richmond & Alleghany R. R. Co., Defendants.

To the Honorable Beverly R. Wellford, Jr.,

Judge of the Circuit Court of the City of Richmond:

The undersigned Special Commissioner appointed by a decree of the Circuit Court of the City of Richmond, Virginia, entered on the 19th day of December, 1888, in the above entitled causes, which are therein depending, respectfully reports:

That pursuant to the requirements of the aforesaid decree, he caused to be published notice of the time, place and terms of the sale in the manner provided and required by said decree, and also served a notice of said sale, and the time, place and terms thereof, upon the Board of Public Works of the State of Virginia ninety days before the day of sale, as required by said decree.

The undersigned further reports that on the 16th day of April, 1889, at 12 o'clock M., at the front door of the courthouse of the Hustings court, in the City of Richmond, Virginia, pursuant to the said decree and notice, he, in the presence of a large assembly of persons, offered for sale at public auction to the highest bidder, upon the terms and conditions mentioned in the said decree, the entire property in said decree ordered to be sold. Before offering the property for sale, the undersigned, at the time and place appointed for the sale, caused the notice of advertisement of sale to be publicly read, and the property was then offered for sale to the highest bidder. The first bid received therefor was the sum of five million dollars ($5,000,000), and this was the only bid made. The property was cried for some time and due warning given that unless some one increased the bid

PLAINTIFF'S EXHIBIT No. 23.

Continued.

the property would be knocked off at that price. No one bidding more, the undersigned knocked off and sold the said property at the price of five million dollars ($5,000,000) to Messrs. Erwin Davis, Charles F. Cox and J. Kennedy Tod, committee of purchase, for themselves and others. The purchasers on the day of sale paid to the undersigned the sum of fifty thousand dollars ($50,000) in cash, which has been by him deposited in the First National Bank of Richmond, Virginia, to the credit of this court in these causes, a certificate of which deposit is herewith returned.

Respectfully submitted,

EUGENE R. LELAND,
Special Commissioner.

Richmond, Va., April 16, 1889.

(pp. 202-203 of suit of Terrell & Bocock, Trustees, vs. The Richmond & Alleghany Railroad Company.)

No. 247-c.

In the Circuit Court of the City of Richmond.

April 17, 1889.

Terrell & Bocock, Trustees,
vs.
The Richmond & Alleghany R. R. Co. & Als.,

and

Alexander & Ellyson, Trustees,
vs.
The Same.

These causes came on this day to be again heard on the papers formerly read, the proceedings and orders formerly had and entered herein, and the report of E. R. Leland, special commissioner, this day filed herein, showing that on the 16th day of April, 1889, the said commissioner sold at public auction, at the price of $5,000,000 that being the highest bid, to Erwin Davis, Charles F. Cox and J. Kennedy Tod, committee of purchase, for themselves and others, the entire premises and property, rights, privileges and franchises of the Richmond & Alleghany Railroad Company, in due conformity with and as required by the decree heretofore entered herein on the 19th day of December, 1888, and upon the terms and

PLAINTIFF'S EXHIBIT No. 23.

Continued.

conditions set forth in the said decree and on the certificate of deposit filed with said report, to which report there is no exception, and were argued by counsel: On consideration whereof the court doth adjudge, order and decree that the said report be and the same is hereby approved and confirmed. And the court doth ratify and approve the sale made by the said E. R. Leland, special commissioner, to the said Erwin Davis, Charles F. Cox and J. Kennedy Tod, committee of purchase, for themselves and others, upon the terms and conditions prescribed and set forth in the said decree of the 19th day of December, 1888, and doth adjudge, order and decree that the said sale as reported, and as hereby approved, do stand confirmed.

(pp. 229-235 of Record of suit of Terrell & Bocock, Trustees vs. Richmond & Alleghany Railroad Company.)

No. 253-a.

DEED OF CONVEYANCE FROM E. R. LELAND, SPECIAL COMMISSIONER, TO PURCHASING COMMITTEE.

AN INDENTURE made the twentieth day of May, 1889, by and between E. R. Leland, a special commissioner of the Circuit Court of the City of Richmond, in the State of Virginia, duly appointed in the suits in chancery hereinafter mentioned, party of the first part, and Erwin Davis, Charles F. Cox and J. Kennedy Tod, parties of the second part.

Whereas, on or about the twenty-third day of June, 1882, Ashbel Green and Thomas S. Bocock, as trustees, did commence a suit in chancery in said Circuit Court of the City of Richmond, against the Richmond & Alleghany Railroad Company and others for the foreclosure of a certain deed of trust or mortgage, executed and delivered by the said Richmond & Alleghany Railroad Company to the said Ashbel Green and Thomas S. Bocock, as trustees, under date of the twenty-seventh day of April, 1881; and a supplementary deed of trust or mortgage, also executed and delivered by the said company to the same trustees under date of the twenty-fourth day of May, 1881, which said deeds of trust or mortgages are fully set forth and copies thereof filed in the said suit; and

Whereas, after the institution of said suit the said Ashbel Green resigned his office as trustee and Herbert L. Terrell was duly appointed as trustee in his stead, and the said suit was duly revived in the name of

PLAINTIFF'S EXHIBIT No. 23.

Continued.

the said Herbert L. Terrell as complainant in the place of said Ashbel Green, and thereafter proceeded with his name; and

Whereas, on or about the ... day of October, 1883, Henry M. Alexander and Henry K. Ellyson, as trustees, did commence a suit in chancery in the said Circuit Court of the City of Richmond against the said Richmond & Alleghany Railroad Company and others, for the foreclosure of a certain deed of trust or mortgage, executed and delivered by the said Richmond & Alleghany Railroad Company to the said Henry M. Alexander and Henry K. Ellyson, as trustees, under date of the fifth day of March, 1880; which said deed of trust or mortgage is fully set forth and a copy thereof filed in said suit; and

Whereas, the said suits were, by a decree entered therein by the said Circuit Court, on the twentieth day of June, 1884, ordered to be thereafter heard together; and

Whereas, such proceedings were had in the said suits from time to time, that on the nineteenth day of December, 1888, a decree of foreclosure and sale was entered in the said suits by the said Circuit Court of the City of Richmond; and

Whereas, in and by the said decree, the said E. R. Le'and was appointed a special commissioner to make the sale provided for and directed by said decree, and in pursuance of such appointment, did afterwards—to-wit, on the sixteenth day of April, 1889, after the advertisement and notice prescribed in the said decree, sell at public auction, at the place named in said decree, in the City of Richmond, all and singular the property, premises, rights, privileges and franchises, which the said special commissioner was directed by the said decree to sell, upon the terms and conditions in said decree fully and at large set forth, to which decree reference is hereby specially and expressly made; and

Whereas, at such sale the said Erwin Davis, Charles F. Cox and J. Kennedy Tod, styling themselves a committee of purchase for themselves and others, became the purchasers thereof for the sum of five million dollars ($5,000,000); and

Whereas, afterwards the said special commissioner did duly make his report of said sale to the said court, and the said sale was duly approved and confirmed by the said court; and

Whereas, an order was made by the said court in the said suits on the 20th day of May, 1889, authorizing and directing the said E. R. Leland, commissioner, the party of the first, as special commissioner; upon the terms and conditions set out in the said order, to execute and deliver a conveyance of all and singular the property, premises, rights, privileges and franchises so sold to the said purchasers thereof, subject to the liens

PLAINTIFF'S EXHIBIT No. 23.

Continued.

specified in the fifth, eighth, ninth, tenth and eleventh paragraphs of the said decree of the nineteenth of December, 1888, so far as the liens mentioned in the said fifth, eighth, ninth, tenth and eleventh paragraphs affect the particular property and premises mentioned in the said paragraphs, and subject to all lawful and binding contracts, obligations and liabilities of every kind of the receivers or receiver in the said causes, as well as those made, entered into or incurred by them or him in their or his own name, as those made, entered into or incurred by them or him in the name of the Richmond & Alleghany Railroad Company; subject also to the various contracts, agreements, leases and deeds entered into by the receivers or receiver, under the authority of decrees in the said causes, with persons or corporations, referred to into the thirteenth paragraph of the said decree of the nineteenth of December, 1888, the purchasers to take the premises, subject to and with the obligation to abide, keep and perform all the terms and stipulations of said contracts, agreements, leases and deeds in all respects; and subject also to the payment of the bond of two hundred thousand dollars ($200,000) executed by the parties of the second part, as provided in the nineteenth paragraph of the said decree of the nineteenth of December, 1888, and of the bond for a like amount to be substituted in its place by the corporation resulting from the sale and this conveyance; and subject also to the payment of the bond for one hundred thousand dollars ,executed by the said parties of the second part, payable to Lawrence Myers and Decatur Axtell, for the further indemnity of the receivers or receiver in these causes; and subject to the bond for a like amount to be substituted in the place of the last named bond by the corporation resulting from the sale and this conveyance; and

Whereas, the said purchasers have complied with and fulfilled the terms and conditions of the said order; and

Whereas, the said purchasers will, upon the due execution and delivery of these presents by force of the statute in such case made and provided, forthwith be and become a corporation by any name which may be herein set forth; and

Whereas, under and in pursuance of the said statute, the said purchasers, parties hereto of the second part, have declared, and do herein and hereby declare, that the said name by which they shall, by force of the said statute become a corporation, is and shall be the Richmond & Alleghany Railway Company; and

Whereas, it is the true intent and meaning of these presents that this conveyance shall enure to the use, benefit and advantage of the said corporation so designated and described:

Now, therefore, this indenture witnesseth: That the said E. R. Leland, special commissioner as aforesaid, party hereto of the first part,

PLAINTIFF'S EXHIBIT No. 23.

Continued.

in consideration of the premises and of five million dollars ($5,000,000) in hand paid, or secured to be paid, hath granted, bargained, sold, aliened, assigned, released and confirmed, and by these presents doth grant, bargain, sell, alien, assign, release and confirm with special warranty unto the said Erwin Davis, Charles F. Cox and J. Kennedy Tod, for the use, benefit and advantage of the said corporation, which is hereby created under the name and style of the Richmond & Alleghany Railway Company, all and singular, the rights, privileges, interests, franchises, lands, tenements, hereditaments, appurtenances and property of every description, whether real, personal or mixed, embraced or included, in the said decree of sale, and the sale pursuant thereto, that is to say, the entire railroad of the said Richmond & Alleghany Railroad Company, extending from the City of Richmond, in the county of Henrico, and State of Virginia, by way of Lynchburg, in the county of Campbell, to Buchanan, in the county of Botetourt, and thence to Clifton Forge, in the county of Alleghany; and all branches and extensions of the said railroad, including its North River, or Lexington branch, and its Rivanna River branch, and including also the railroad acquired by the Richmond & Alleghany Railroad Company from the Buchanan and Clifton Forge Railway Company; and all lands, tenements and hereditaments belonging to, or acquired by the said Richmond & Alleghany Railroad Company; and all easements and appurtenances thereunto belonging, or in any wise appertaining, and all railways, ways and rights of way, depot grounds, tracks, bridges, viaducts, culverts, fences and other structures, depots, station houses, engine houses, car houses, freight houses, wood houses, ware houses, machine shops, superstructures, buildings, erections, fixtures of every kind and nature whatsoever; leaseholds, leases, rights under leases, or under contracts, covenants or agreements; terms or parts of terms, acquired, owned, held or used for the use or purpose of the said Richmond & Alleghany Railroad Company, or its branches or any of them, or in connection therewith, or the business thereof; and all locomotives, engines, tenders, cars and other rolling stock and equipments; and all rails, ties, machinery, tools, implements, fuel and material, whatsoever; and all other property, real, personal or mixed, acquired, held, or used for and in connection with the construction, operation, maintenance, reparation or replacement of the said railroad, or any part thereof; and all the rights, privileges, franchises and immunities of every kind and nature of the said Richmond & Alleghany Railroad Company; and also all the property, works and franchises which were acquired from the James River and Kanawha Company, together with all the rights, water power, water rights, privileges and franchises conveyed to the said Richmond & Alleghany Railroad Company by the said James River and Kanawha Company; also all the property and premises lying

PLAINTIFF'S EXHIBIT No. 23.

Continued.

and being in the City of Manchester, in the county of Chesterfield, in the State of Virginia, on the south side of the James River, and between the said river and the track of the Richmond & Danville Railroad Company, extending from the head wall or gate of the Manchester Canal to Walkers Creek; and also the said Manchester Canal, with all rights, easements and appurtenances belonging to said premises, or in anywise thereunto appertaining; and also the bridge across James River at New Canton, Buckingham county, State of Virginia, and certain lands and premises adjacent thereto, more particularly described in a deed of the nineteenth of June, 1883, executed by Virginius Newton; a more full and particular description of the property hereby intended to be conveyed being contained in the said decree of the nineteenth of December, 1888, to which reference is hereby made; it being intended to convey all and singular the premises, rights, privileges and franchises embraced in the mortgage, or deed of trust, to the said Henry M. Alexander and Henry K. Ellyson, trustees, executed by the Richmond & Alleghany Railroad Company, bearing date on the fifth day of March, 1880; and all and singular the premises, rights, privileges and franchises embraced in the mortgages or deeds of trust to Ashbel Green and Thomas S. Bocock, executed by the said Richmond & Alleghany Railroad Company, bearing date on the twenty-seventh day of April, 1881, and the twenty-fourth of May, 1881; and all and singular the premises, rights, privileges and franchises embraced in the deed from Charles C. Deming to the said Richmond & Alleghany Railroad Company, bearing date on the 12th day of July, 1883; and all the premises, rights, privileges and franchises embraced in a certain deed poll, executed by Virginius Newton, bearing date on the nineteenth of June, 1883; and all other property of every kind and description, if any, of which said Richmond & Alleghany Railroad Company was possessed, or to which it was entitled at the time of the said sale in accordance with the statute in such case made and provided, and the terms of the mortgages or deeds of trusts executed by said company. To have and hold, all and singular, the above mentioned premises, rights, privileges, interests, franchises, lands, tenements hereditaments, appurtenances and property of every description, whether real, personal or mixed, herein conveyed, or intended to be conveyed, unto the said Erwin Davis, Charles F. Cox and J. Kennedy Tod, for the use, benefit and advantage of the said Richmond & Alleghany Railway Company, subject, however, to the liens specified in the fifth, eighth, ninth, tenth, and eleventh paragraphs of the said decree of the nineteenth of December 1888, so far as the liens mentioned in the said fifth, eighth, ninth, tenth and eleventh paragraphs affect the particular property and premises mentioned in said paragraphs and subject to all lawful and binding contracts, obligations and liabilities of every kind of the receivers or

PLAINTIFF'S EXHIBIT No. 23.

Continued.

receiver, in the said causes, as well those made, entered into or incurred by them or him, in their or his own name, as those made, entered into or incurred by them or him in the name of the Richmond & Alleghany Railroad Company; subject also to the various contracts, agreements, leases and deeds entered into by the receivers or receiver, under the authority of decrees in the said causes with persons or corporations referred to in the thirteenth paragraph of the said decree, it being understood that the purchasers shall take the premises hereby conveyed and every part thereof, subject to and with the obligation to abide, keep and perform all the terms and stipulations of such contracts, leases, agreements and deeds in all respects; and subject to the payment of the bond for two hundred thousand dollars ($200,000) executed by the parties of the second part, as provided in the nineteenth paragraph of the said decree; and to the payment of the bond for a like amount to be substituted in its place by the corporation resulting from the sale and this conveyance; and subject to the payment of the bond for one hundred thousand dollars ($100,000), executed by said parties of the second part, and payable to Lawrence Myers and Decatur Axtell, for the further indemnity of the receivers or receiver in the said causes and to the payment of the bond for a like amount to be substituted in its place by the corporation resulting from the sale and this conveyance. And the premises hereby conveyed, and every part of the same, are hereby expressly charged with a lien to secure the performance and payment of all lawful contracts and liabilities made or incurred by the receivers or receiver in these causes, and to secure the payment of the bond for two hundred thousand dollars ($200,000), executed by the parties of the second part, pursuant to the nineteenth paragraph of the said decree of the nineteenth of December, 1888, and of the bond of like amount to be substituted in its place by the said Richmond & Alleghany Railway Company, and of the bond for one hundred thousand dollars ($100,000) executed by the said parties of the second part for the further indemnity of the receivers or receiver in these causes and of the bond of like amount to be substituted in its place by the said Richmond & Alleghany Railway Company, and to indemnify and save harmless the receivers or receiver in these causes from all loss or damage in respect to any contract or liability whatsoever made or incurred by them or him, it being expressly understood and agreed that the said purchasers have assumed, and do hereby assume, all the outstanding lawful liabilities and contracts of the said receivers or receiver.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

IN THE

SUPREME COURT OF THE UNITED STATES.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

The Commonwealth of Virginia, by William A. Anderson, her Attorney General, comes and moves the court for leave to file the accompanying bill of complaint of the said Commonwealth against the State of West Virginia, and that due process of subpœna issue thereon in accordance with the rules of practice of the court.

Attorney General of Virginia.

[20241]

FILE COPY.

Office Supreme Court, U. S.
DEC 9 1907
JAMES H. MCKENNEY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 2 Original.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

vs.

STATE OF WEST VIRGINIA, DEFENDANT.

PROPOSED DECREE REFERRING THE CAUSE TO A MASTER.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

IN EQUITY.

Original, No. 4.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

v.

STATE OF WEST VIRGINIA, DEFENDANT.

DECREE REFERRING THE CAUSE TO A MASTER.

This cause came on this day to be heard upon the complainant's bill and the exhibits filed therewith; the answer of the defendant, with the exhibits filed therewith; the general replication thereto by the complainant, and was argued by counsel, and on consideration of which it is adjudged, ordered, and decreed that this cause be, and the same is hereby, referred to —— ——, who is appointed a special master herein, who, after giving — days' notice to the parties of the times and places fixed by him, from time to time, for executing this decree, will ascertain and report to the court:

I.

The amount of the public debt of the Commonwealth of Virginia on the 1st day of January, 1861, stating specifically how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidences of said indebtedness.

II.

(*a*) The amount of state expenditures made by the Commonwealth of Virginia prior to the first day of January, 1861, within the territory now included within the State of West Virginia since any part of said indebtedness was contracted, as provided by the ordinance adopted by the Commonwealth of Virginia at Wheeling, August 20th, 1861.

(*b*) The aggregate ordinary expenses of the state government of the Commonwealth of Virginia prior to January 1st, 1861, and since any part of said indebtedness was contracted.

(*c*) All moneys paid into the treasury of the Commonwealth of Virginia from the counties included within the State of West Virginia during said period.

III.

Whether any agreements, contracts, or arrangements, other than those appearing from the exhibits filed with the bill herein, have been made by the Commonwealth of Virginia with her creditors since January 1, 1861, with reference to said public debt created prior to said date, or to the satisfaction or discharge of said indebtedness or any part thereof.

IV.

The amount of certificates relating to said indebtedness issued by the Commonwealth of Virginia under the acts of her General Assembly, approved March 30, 1871, March 28, 1879, February 14, 1882, and February 20, 1892; and what amount, if any, of said certificates have been deposited since January 4, 1906, with the commission appointed under the joint resolution of the General Assembly of the Commonwealth of Virginia approved March 6, 1894; and he will also ascertain and report what amount of said certificates so deposited since said date were issued under the act of March 30, 1871; what amount were issued under the act of March 28, 1879; what amount were issued under the act of February 14, 1882, and what amount were issued under the act of February 20, 1892.

V.

The master will ascertain and report to what extent said certificates issued by the Commonwealth of Virginia represented the principal of one-third of said public debt and to what extent they represented the interest thereon, and the rate at which the interest was reckoned; and he will also ascertain and report whether there is included in said certificates, or in any of them, the interest, or any part of the interest, which had accrued on the portion of said public debt refunded by the Commonwealth of Virginia, and if so, what was the total amount of such interest and at what rate it was reckoned.

VI.

It is further ordered and decreed that the master shall ascertain and report what amount, if any, of the bonds or other evidences of debt issued by the Commonwealth of Vir-

ginia under the act of March 30, 1871, was subsequently surrendered by the holders thereof and exchanged for other bonds or evidences of debt issued under the acts of 1879, 1882, and 1892, and if such exchanges were made, the master will ascertain and report what rate of interest was agreed to be paid upon such new bonds or evidences of debt.

VII.

It is further ordered and decreed that the Commonwealth of Virginia and the State of West Virginia shall each produce before the master all such records, books, papers, and public documents as may be in their possession or under their control, and which may, in his judgment, be pertinent to the said inquiries and accounts or any of them.

And the master is authorized to make or cause to be made such examination as he may deem desirable of the books of account, vouchers, documents, and public records of either state relating to the inquiries he is herein directed to make, and to cause copies thereof or extracts therefrom to be made for use in making up his report.

All public records published by authority of the Commonwealth of Virginia prior to the 17th day of April, 1861, and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the date aforesaid which in the judgment of the master may be relevant and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the master, but all such evidence shall be subject to exceptions to its competency. The public acts and records of the two states since the admission of West Virginia into the Union shall be evidence, if pertinent and duly authenticated, but all such evidence tendered by either party shall be subject to proper legal exceptions to its competency.

The master is empowered to summon any persons whose testimony he or either party may deem to be material, and

to cause their depositions to be taken before him, or by a notary public or other officer authorized to take the same, after reasonable notice to the adverse party.

The master is authorized and empowered to employ such stenographers and other clerical assistants as he may find it desirable to employ in order to the prompt and efficient execution of this order of reference, and to agree with such stenographers and typewriters and clerical assistants upon such compensation to be made to them as the master may consider reasonable and just. He is authorized to direct their compensation to be paid out of the funds to be deposited to the credit of this cause.

The complainant shall cause the sum of three thousand dollars to be deposited with the marshal of this court to the credit of this cause, and such further sums as from time to time may be required, on account of the costs and expenses of executing this decree; and the master is authorized from time to time to draw upon the fund so deposited by Virginia for the compensation of the stenographers, typewriters, and other clerical assistants whom he may employ, and for any other costs and expenses, including stationery and printing, which may in his judgment be necessary to be incurred in executing this order of reference.

The said marshal is allowed to have and retain a commission of 5 per centum for his services in receiving and disbursing the funds so deposited with him, and he will make a report of his transactions, receipts, and disbursements in the premises to the court.

Any notices to be given in connection with the execution of this decree may be given to the Attorneys General of the respective states.

JUDD & DETWEILER INC
PRINTERS,
WASHINGTON, D. C.

FILE COPY.

Office Supreme Court, U. S.
FILED.
DEC 19 1907
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

Original, No. 2

IN EQUITY.

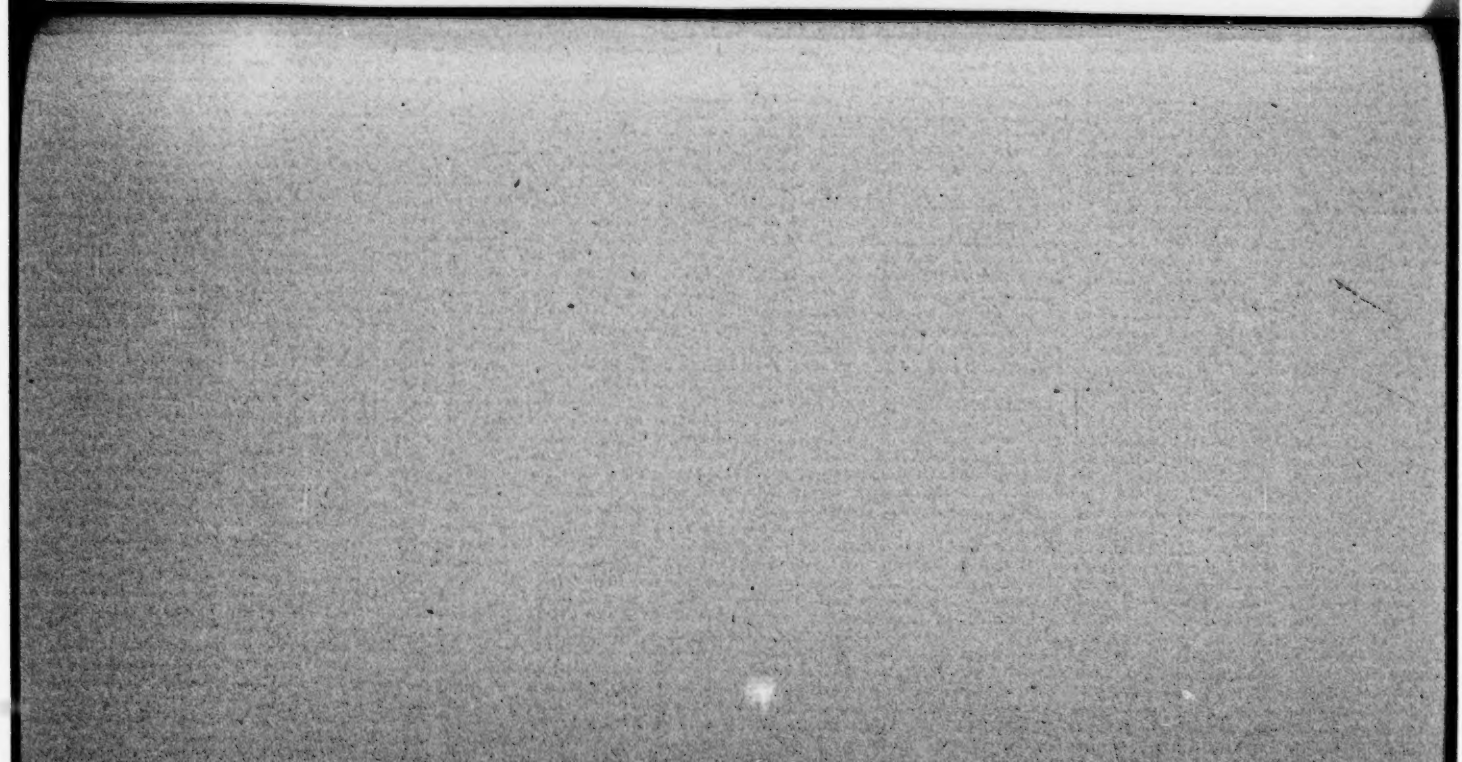
COMMONWEALTH OF VIRGINIA, COMPLAINANT,

vs.

STATE OF WEST VIRGINIA, DEFENDANT.

DECREE REFERRING THE CAUSE TO A MASTER.

WILLIAM A. ANDERSON,
HOLMES CONRAD,
Counsel for the Complainant.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

Original, No. 4.

IN EQUITY.

COMMONWEALTH OF VIRGINIA, COMPLAINANT,

vs.

STATE OF WEST VIRGINIA, DEFENDANT.

DECREE REFERRING THE CAUSE TO A MASTER.

This cause coming on this day to be heard upon the complainant's bill and the exhibits filed therewith, the answer of the defendant, with the exhibits filed therewith, and the general replication filed by the complainant thereto, was argued by counsel. On consideration whereof it is adjudged, ordered, and decreed that this cause be referred to

, who is hereby appointed a special master herein, who, after giving not less than ten days' notice to the parties of the times and places fixed by him, from time to time, for executing this decree, will without delay ascertain and report to the court:

I.

The amount of the public debt of the Commonwealth of Virginia as of the first day of January, 1861, stating specifically, how and in what form the same was evidenced, by what authority of law and for what purposes the same was created, and the dates and nature of the bonds or other evidences of said indebtedness.

II.

What amount and proportion of said indebtedness and of the interest accrued thereon should in equity be apportioned to and be now paid by the State of West Virginia.

III.

He will make and return with his report any special or alternative statements of the accounts between the complainant and the defendant in the premises which either may desire him to state or which he may deem to be desirable to present to the court.

It is further adjudged, ordered, and decreed as follows:

(1) To the end that full and complete information may be afforded the master as to all matters involved in the inquiries with which he is charged by this decree, the Commonwealth of Virginia and the State of West Virginia shall each of them respectively produce before the master, or give him access to, all such records, books, papers, and public documents as may be in their possession or under their control and which may, in his judgment, be pertinent to the said inquiries and accounts or any of them.

And the master is authorized to visit the capitals of Virginia and West Virginia, and to make or cause to be made

such examinations as he may deem desirable of the books of account, documents, and public records of either State relating to the inquiries he is directed to make, and to cause copies thereof or extracts therefrom to be made for use in making up his report.

All published records published by authority of the Commonwealth of Virginia prior to the creation of the State of West Virginia and all papers and documents and other matter constituting parts of the public files and records of Virginia prior to the partition of her territory which, in the judgment of the master, may be relevant and pertinent to any of said inquiries, or copies thereof, if duly authenticated, may be used in evidence and considered by the master. The public acts and records of the two States since the creation of the State of West Virginia shall be evidence if pertinent and duly authenticated; but all such testimony tendered by either party shall be subject to proper legal exception as to its competency.

The master is empowered to summon any persons whose testimony he or either party may deem to be material, and to cause their depositions to be taken before him or by a notary public or other officer authorized to take the same, after reasonable notice to the adverse party.

(2) The master is authorized and empowered to employ such accountants, stenographers, or other clerical assistance as he may find it desirable to employ, and to secure such rooms or offices as he may require, in order to the prompt and efficient execution of this order of reference, and to agree with such accountants and stenographers, typewriters, and the owner of such room or rooms for such compensation to be made to them as the master may consider reasonable and just. He is authorized to direct their compensation to be paid out of the funds to be deposited to the credit of this cause.

(3) The complainant will cause the sum of three thousand dollars to be deposited with the marshal of this court to the

credit of this cause, on account of the costs and expenses of executing this decree and of this suit, and the complainant will cause such farther sums as may be necessary to defray the costs and expenses of executing this decree to be from time to time in like manner deposited with said marshal. In the event that the defendant shall desire any special statement or accounts to be made, she shall in like manner, before the taking of any such account or the making of such special statement, cause the sum of dollars to be deposited with the marshal.

And the master is authorized from time to time to draw upon the funds so deposited by Virginia for the compensation of the accountants and other clerical assistants whom he may employ, and for any other costs or expenses, including stationery, printing, and room rent, which it may in his judgment be necessary to be incurred in promptly and efficiently executing this order of reference or making up any special statement or accounts asked for by the plaintiff, and the same will be charged up as part of the complainant's costs; and he will draw upon the fund deposited by the defendant for any costs which may be incurred in making up any special statement or accounts which may be desired by the defendant to be specially stated, which drafts, accompanied by proper vouchers, the marshal of this court will pay, and the same will be charged up as part of the defendant's costs in the cause.

And the said marshal is allowed to have and retain a commission of five per centum for his services in receiving and disbursing the funds so deposited with him, and he will make a report of his transactions, receipts, and disbursements in the premises to the court.

IV.

The first notice of the time and place fixed by the master for beginning the taking of the accounts directed by this

decree shall be given at least thirty days before the date fixed by him therefor, provided that the date so fixed by the master for beginning the taking of said accounts shall not be a day earlier than February 20, 1907. The master may adjourn his sittings from time to time and place to place without notice to the parties. He will cause to be kept, in a minute book to be provided for the purpose, a journal or minutes of his sittings in the execution of this decree, showing the counsel present, if any, any adjournments which may be taken by him from time to time or place to place, and any other matters which the master may deem it proper to mention therein, which minute book or journal he will return with his report.

V.

Any notices to be given in connection with the execution of this decree may be given to the Attorneys-General of the respective States.

RICHMOND, VIRGINIA, *December* 7, 1907.

To Hon. CLARKE W. MAY,
Attorney-General of West Virginia:

Please take notice that on the meeting of the court on Tuesday, the seventeenth instant, we will move the Supreme Court of the United States to enter in the above-entitled cause the decree of which the above is a copy.

WILLIAM A. ANDERSON,
HOLMES CONRAD,
Counsel for the Complainant.

FILE COPY.

Office Supreme Court, U. S.
FILED.
MAR 9 1907
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

[redacted]

~~Original, No. 1.~~ No. 2 Orig
O. T. 1907

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF OF COUNSEL FOR VIRGINIA UPON THE QUESTIONS RAISED BY THE DEMURRERS.

WILLIAM A. ANDERSON,
Attorney-General of Virginia.
HOLMES CONRAD,
Of Counsel for Virginia.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 25655

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

Original, No. 7.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

BRIEF OF COUNSEL FOR VIRGINIA UPON THE QUESTIONS RAISED BY THE DEMURRERS.

Statement of Facts as Shown by the Bill.

I.

On the 20th of June, 1863, West Virginia became a State of the American Union pursuant to an act of the United States Congress approved December 31, 1862, and in accordance with a proclamation of President Lincoln made April 20, 1863, under that act of Congress, upon the terms and conditions prescribed by the Commonwealth of Virginia in an ordinance adopted in convention and in the acts passed by the General Assembly of the restored government of the Commonwealth giving her consent to the formation of the new State out of her territory, with the constitution adopted for the new State by the people thereof, and which was sanctioned by Congress.

II.

Prior to the formation of the new State, the Commonwealth of Virginia had contracted an indebtedness approximating, as of the first day of January, 1861, the sum of $33,000,000, evidenced by the contracts and obligations of the undivided State.

This large indebtedness had been created in constructing a system of public highways, turnpikes, canals, railways, and other public internal improvements, begun in the first quarter of the nineteenth century and designed to fairly develop every part of her territory, and to afford means of communication between the different sections of the Commonwealth and the seashore, and to give to the people in all the various portions of the State access to the best available markets.

The "vast potentialities of wealth and revenue in the undeveloped stores of minerals and timber, which had been known for years prior to the date named (1861), and their prospective values, if made accessible to the markets of the country, were understood to be well nigh beyond computation." Accordingly the costly system of highways, canals, and railways thus projected were designed, begun, and in very great measure constructed, *for the purpose of developing the resources of the region afterwards embraced in the State of West Virginia,* and of giving to its people adequate facilities of communication with other portions of the Commonwealth and access to the seashore and to the markets of the country.

This system of internal improvement and the large indebtedness contracted in carrying it into execution received the sanction of the people of the counties subsequently constituting West Virginia, through their representatives in the General Assembly of the undivided State, and a very large proportion of that indebtedness would not have been created

but for the votes of the members of the General Assembly representing those counties; and little or none of that indebtedness would have been contracted had the representatives from the counties subsequently forming the State of West Virginia voted against its creation. Several millions of dollars of said indebtedness were contracted on account of works of internal improvement constructed in the territory now constituting West Virginia.

III.

The 9th section of the ordinance adopted by the people of the restored State of Virginia, in convention assembled in the city of Wheeling, Virginia, on the 20th day of August, 1861, entitled "An ordinance to provide for the formation of a new State out of the portion of the territory of this State," provided as follows:

> "9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all of the State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the treasury of the Commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia."

Upon this stipulation and condition, afterwards accepted and acted upon by the people of West Virginia, the consent of the Commonwealth of Virginia was given to the formation of the new State.

IV.

Before the creation of the State of West Virginia, and while the territory and the people afterwards constituting that State still formed a part of the Commonwealth of Virginia and were subject to its jurisdiction and laws, the General Assembly of the restored State of Virginia, on the 3d day of February, 1863, enacted the following law:

> "That all property, real, personal and mixed, owned by, or appertaining to this State, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this State, or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of the State, to the extent of the interest and estate of this State therein; and shall also include the interest of this State, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this State, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this State.
>
> 5. That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State, provided that no such property, stocks and credits shall have been obtained since the reorganization of the State government."

And by another act of the General Assembly of the restored State of Virginia, passed February 4, 1863, it was enacted as follows:

> "1. That the sum of one hundred and fifty thousand dollars be, and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.
>
> 2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States: provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all moneys that up to that time, have been paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this State."

These two statutes of the restored government of Virginia validly prescribed the terms and conditions upon which the property and money therein mentioned should be transferred to the new State, when it should be formed; and, pursuant to their provisions, money and property amounting to and of the value of several millions of dollars were, after the formation of the new State, paid over and transferred to and accepted by West Virginia.

V.

The constitution of the State of West Virginia, which became effective when she was admitted into the Union pursuant to the said act of Congress and proclamation of President Lincoln, contained the following provisions:

By section 5 of article VIII of said Constitution it was provided:

> "5. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of war."

And by section 7 of article VIII it was provided:

> "7. The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank."

And by section 8 of article VIII it was provided:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

At the time the constitution containing these provisions was adopted by West Virginia that State did not owe, and could not have owed, any "public debt" or "previous liability," except for her just contributive portion of the public debt of the original State of Virginia, and for the money and

property of the original State which had been transferred to and received by her under the acts of the General Assembly of the restored State of Virginia above set forth, enacted while the territory and people afterwards forming the State of West Virginia constituted a part of the Commonwealth of Virginia.

The provisions of sections 7 and 8 of article VII of said constitution were embodied therein by the people of West Virginia, or their representatives, for the purpose of complying with and carrying out in good faith the stipulations and conditions upon which the consent of Virginia was given to the formation of the State of West Virginia, and to the transfer of the money and property aforesaid to said new State.

VI.

After the formation of the State of West Virginia and after the restored government of Virginia had become the only government of the Commonwealth and its authority recognized and established throughout her limits, at intervals after the year 1865 down to and including the year 1905, various efforts were made by the Commonwealth of Virginia, through its constituted authorities, to bring about and effect an adjustment and settlement with West Virginia of the equitable proportion of the public debt of the undivided State proper to be borne and paid by the State of West Virginia. All of these efforts proved unavailing and abortive; and for years West Virginia has refused or failed to take any action or do anything for the purpose of bringing about any adjustment or settlement with this State.

Only after exhausting every means of amicable negotiation and having her overtures to that end repeatedly refused, and as a last resort, has Virginia been constrained at length reluctantly to apply to this, the only tribunal which can afford relief, for an adjudication and determination of this question, of such vast importance to her and to all of her people.

VII.

Without waiting for a settlement with West Virginia, the Commonwealth proceeded, fully recognizing her liability for an indebtedness, all of which stood in her name, soon after the establishment of its restored government at Richmond, to make provision for the settlement and payment of the portion of the common debt of the undivided State which she could be fairly expected to assume and pay, under the circumstances then existing and the conditions which confronted her.

Several efforts were made to effect such an adjustment and settlement, the most important of which was that embodied in the act of March 30, 1871, mentioned at page 7 and copied at pages 13 to 16 of the bill.

By reason of the then impoverished condition of her people, occasioned by disasters which had destroyed their resources and paralyzed their productive energies, it was soon apparent that Virginia, in assuming and capitalizing, and again recapitalizing, the accrued interest upon the debt of the original State, and undertaking to pay, with 6 per cent. interest, two-thirds of the aggregate sum thus ascertained, had assumed a heavier burden than she was able to bear. Accordingly other plans for the settlement of the State debt were adopted, and a final adjustment made under the act of February 20, 1892, set forth in the bill.

As a result of this, it will be seen that Virginia has assumed and already actually paid off and retired, exclusive of the large amounts she has paid on account of interest, *a principal sum* aggregating as much as, or more than, the entire principal sum of the debt of the undivided State as of January 1, 1861.

The facts in regard to these various transactions and the adjustment made by Virginia with the common creditors of the old State are recited in the bill merely for the purpose

of showing the present status of the public debt of the original State and the precise relation of this Commonwealth at the present time in respect thereto.

Of course, the rights of West Virginia cannot be affected by any of these transactions between Virginia and the common creditors of the undivided State, except to the extent that Virginia's rights and action therein may entitle her to contribution from West Virginia.

VIII.

As indicating the character of the efforts and sacrifices which Virginia, notwithstanding the disasters and losses which her people have endured, has made, in order to bear and to discharge her just obligations on account of the common debt of the undivided State, and as showing something of the strength of her equitable claim against West Virginia, it must be remembered that she has actually paid off, retired, and discharged and satisfied, so far as West Virginia is concerned, as of the date of the institution of this suit, over $71,000,000, including principal and interest, on account of said common indebtedness.

While Virginia has made this large contribution towards the settlement of the common debt, West Virginia has not paid one dollar thereof.

IX.

Since January 1, 1861, the arbitrary date fixed by the Wheeling ordinance as of which the adjustment and settlement between the two States shall be made, Virginia has actually paid off or retired, and now holds in her own hands and for her own benefit, exclusive of the sums represented by the certificates issued under the funding acts aforesaid, obligations of the undivided State amounting in the aggregate, including the interest to be fairly computed thereon to date, to a sum in excess of $25,000,000. For all of the obligations

and indebtedness of the original State, so taken up and retired or paid off by her, Virginia has a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor.

X.

As a part of the adjustment which Virginia from time to time has made with the holders of the bonds and obligations of the undivided State and as a proper stipulation in connection with the partial settlements thereof made by her, it was agreed between them and Virginia that upon giving to them respectively her obligations for the respective portions of each of the old bonds of the undivided State agreed to be assumed and paid by Virginia, these old original bonds should be deposited with Virginia, and so far as not thus funded by her in her own obligations should be held by her as trustee for the holder or his assigns; and to each of these parties thus entitled she has given her certificate to this effect.

By the terms of the settlements authorized by the acts of 1879, 1882, and 1892, set forth in the bill, no liability rests upon Virginia on account of the certificates given by her pursuant to the terms of those acts, for the bonds deposited with her, and to be held by her, to await a settlement with West Virginia, as to the portion thereof not assumed or paid by Virginia. But it has been suggested that, although there is no liability assumed by Virginia by reason of issuing said certificates or upon said certificates, that there may still be a liability upon her *as to the unfunded portion of the bonds deposited with her under the acts of 1879, 1882, and 1892.* This, however, is a matter of minor importance, because a comparatively small proportion of the old debt of the State was funded under the acts of 1879, 1882, and 1892, as will appear from the circumstance that there are in all only $1,609,600.15 of the certificates issued under the last-men-

tioned three acts outstanding in the hands of the public, as is shown by the exhibit at page 73 of the bill.

The great bulk of the debt of the old State was funded under the act of 1871, and the unfunded portion of the bonds deposited with Virginia by the public creditors under the terms of that act, amounted to $12,703,451.79, upon the principal interest-bearing sum of which there is interest due from July 1, 1871. (See Exhibit No. 1, page 13 of the bill, and statement of Second Auditor of Virginia, embodied in the address of Mr. Randolph Harrison, found at page 73 of the bill.)

The arrangement under the funding act of 1871 was very different from that provided for by the subsequent acts of 1879, 1882, and 1892.

By the acts of 1871 Virginia undertook to be the custodian of the bonds of the undivided State deposited with her, so far as they were unfunded; and that payment should "be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment."

Whatever may have been the purpose of the General Assembly of Virginia in the enactment of this law and in authorizing such contracts to be made, it would seem that Virginia's legal liability on account of said unfunded portion of said bonds is not released or affected by the transaction, but still exists.

However, under all the circumstances of the case and in view of the underlying equities suggested by the facts stated in the bill, it would seem that Virginia has already unquestionably done as much as she could be fairly expected to do towards paying off the common public debt of the old State. The great mass of the holders of the certificates issued by her under the act of 1871, and under the other acts above recited, who are the persons entitled to the said unfunded bonds deposited with her and now held by her, recognizing

the justice of this view, have, through their authorized representatives, entered into the agreement printed at pages 83 to 86 of the bill.

XI.

By joint resolution of the General Assembly of Virginia, printed as Exhibit No. 5, beginning at page 39 of the bill, entitled—

> "A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same,"

approved March 6, 1894, a commission was created for the purposes set forth in the title to the resolution.

The Virginia Debt Commission mentioned in the bill was created pursuant to that resolution, and made earnest efforts to bring about a settlement with West Virginia, without any satisfactory result.

Accordingly the General Assembly of Virginia afterwards passed the act approved March 6, 1900, printed as Exhibit No. 6 of the bill, beginning at page 41 thereof, the object of which is stated in its title as follows:

> "An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises."

By this act, as plainly appears from its terms, additional powers and authority were conferred upon this commission, and it was made its duty, and power was conferred upon it, by and with the advice and approval of the Attorney-General of the State, to take such action and institute such proceed-

ings on behalf of the State as may, in the judgment of said commission and Attorney-General, be needful and proper to protect the interest of the State and bring about and carry into effect a settlement as aforesaid.

After again making an earnest effort to bring about an amicable settlement with West Virginia, by which the proportion of the debt of the original State of Virginia proper to be borne by West Virginia should be ascertained, and after having had their overtures to that end rejected by West Virginia, the said commission deemed it to be its duty, with the advice and approval of the Attorney-General of Virginia, to cause this suit to be brought in strict conformity with the powers conferred upon them by the acts aforesaid, the commission and the Attorney-General considering such action to be needful and proper to protect the interest of the State and bring about and carry into effect such a settlement.

Accordingly, and in strict conformity with the authority conferred by the act of March 6, 1900, this suit was instituted.

BRIEF OF ARGUMENT UPON THE QUESTIONS OF LAW PRESENTED BY THE DEMURRERS.

(1.)

As to the first ground alleged in the amended demurrer, namely, that there is a misjoinder of parties plaintiff and a misjoinder of causes of action, we cannot see that this objection is well taken.

The definitions of misjoinder under English chancery practice, as well as the practice in this country, show that there is no such vice in the bill:

(*a*) As to the misjoinder of parties: This does not arise unless—

> "Coplaintiffs actually have or may have conflicting interests in regard to the object of the suit, or if any or either of them have no interest in the subject-matter of the suit."
>
> Mitf. Pl., p. 399, note.

The rule as to misjoinder of plaintiffs, as laid down by Mr. Daniell, is that—

> "persons who have no interest in the litigation cannot be joined as coplaintiffs in a suit with those who have."
>
> 1st Daniell Chy. (5th Am. ed.), m. p. 301.

Example given by Mr. Daniell of what is not misjoinder: Auctioneer can be joined as coplaintiff with the vender in a bill against the purchaser.

Id., m. p. 302.

Again: Want of interest by a coplaintiff in the subject-matter is ground of demurrer.

Story's Eq. Pl., sections 231, 232, 508, and 509.

Mitf. Pl., 160, 161.

Again: Plaintiffs who have no common interest, but assert distinct and several claims against one and the same defendant, cannot be joined.

Story's Eq. Pl., section 279.

On the other hand, where there is a community of interests among coplaintiffs desiring the same relief against a common defendant, they may be joined.

It was held in Ware *vs.* Duke of Northumberland, 2 Anstruther's Rep., p. 469, that:

> "Unconnected parties might be joined in one suit *where there was a common interest among them all, centering in the point in issue in the cause.*"

This doctrine is strongly approved by Chancellor Kent in Brickenhoff *et als. vs.* Browns, where different judgment creditors united in one bill for discovery and account to set aside impediments to their remedies at law caused by the fraudulent acts of their common debtor.

6 Johnson Chy., 139, 151, 152.

Chancellor Kent says at page 151:

> "It is an ordinary case in this court, for creditors to unite, or for one or more, on behalf of themselves and the rest, to sue the representative of their debtor in possession of the assets, and to seek an account of the estate.
>
> "This is done to prevent a multiplicity of suits, a very favorite object with this court; and this principle so far controls the other rule, which preserves, in some degree, an analogy between pleadings in chancery, and the simplicity of declarations at common law. *There is no sound reason for requiring the judgment creditors to separate their suits, when they have one common object in view, which, in fact, governs the whole case.*" (Italics here and elsewhere ours).

Story's Eq. Pl., section 286; see also 2d Story's Eq. Jur., sections 853, 854.

(*b*) Nor is there any foundation whatever for the objection that there is a misjoinder of causes of action.

Considering together the two grounds of objection which are jointly presented in the first assignment of grounds of demurrer made in the amended demurrer in the light of the established doctrines and definitions, we beg leave to say that they are both founded upon an utter misapprehension of the meaning, scope, and purpose of the bill.

It is impossible that there can be any misjoinder of parties plaintiff, because there is only one party plaintiff. Virginia, in her corporate capacity, is the only plaintiff in the suit. She does not sue in any representative capacity, though the bill discloses the fact that, by reason of the arrangements which she has made with the great mass of the holders of the bonds of the old State, she does hold in her possession nearly all of those bonds as a depository, and *quoad* the custody thereof that she holds them in a fiduciary capacity; but she does not sue as trustee, but sues in her own name for the purpose of obtaining the equitable relief to which the bill shows that she is fairly entitled.

In so far as said bonds have been funded in her own obligations and discharged by her, she holds those bonds as vouchers and evidence of her satisfaction of the same against the State of West Virginia, who is, as a proposition of public law and of equity, bound jointly with her to the public creditors to pay the same, and, as between her and West Virginia, is bound by contract to pay West Virginia's equitable proportion thereof.

If Virginia had no personal interest in respect to the bonds so deposited and held by her in a fiduciary capacity, we would cheerfully concede that she would have no standing to maintain this suit in respect *to these bonds;* but Virginia not only has an interest, but a very great interest, in respect to the unfunded and unsatisfied bonds of the old State, which, confiding in her fair dealing, the public creditors have entrusted to her custody, and in the settlement by

West Virginia of her fair equitable proportion of the indebtedness of the undivided State represented by these bonds; *and that interest is that she shall be exonerated, at least to the extent of West Virginia's liability therefor, from any obligation to pay the same.*

To obtain such just exoneration she has invoked the equitable jurisdiction of this court.

Not only is she entitled to maintain and prosecute this suit, in order to obtain the exoneration which, according to the general principles of equity she is entitled to be decreed, but, by the special contract between her and the parties entitled to these bonds, she has, without any prejudice to the rights of West Virginia or any violation of any duty she owes to West Virginia, and without doing anything of which West Virginia has any ground whatever for complaint, acquired a still greater interest and right, namely, to be entirely exonerated from any liability on account of the unfunded portion of the common debt represented by the bonds so deposited with her and by the certificates which she has issued therefor.

This interest is given to her by the express terms of the contract which she has made with these certificate-holders, who are the owners of the bonds of which she is the custodian, and who, recognizing the enormous contributions which she has made from her limited means to the satisfaction of the common debt, have cheerfully agreed to accept whatever amount this court shall ascertain to be the just and equitable proportion of the common debt of the old State to be borne by West Virginia, in full discharge and satisfaction of any claim they may have against Virginia and in full acquittance of all demands against her. (See 4th clause of contract, p. 85 of bill.)

It will be observed that, as has been already suggested, this stipulation, though it enures to the protection and to the interest of Virginia, in no sense and by no possibility is or can be prejudicial to any right of West Virginia; for under

no circumstances could or will this agreement operate to add one cent to the liability of West Virginia.

We respectfully submit that her equitable right to exoneration from liability as to these unsatisfied and unfunded bonds, of which she is the custodian, alone gives her a standing to maintain this suit to have West Virginia's liability, not only for the whole indebtedness of the undivided State, but for the bonds so deposited with her, ascertained, determined, and adjudicated; and that her contractual right to exoneration under her agreement with the parties equitably entitled to those bonds increases her interest and confirms her right to have such exoneration decreed.

An authority of respectability and of proven merit has said:

> "It was not necessary to wait till some one was dammified by having paid, or having claim made against him for the whole; a bill might be filed to settle the amount due from each individual of a body liable to a common burden, and to compel the payment by each, of his share."
>
> 2 Spence Equitable Juris., marginal p. 662.

The suit is brought, as appears plainly from the bill, for the purpose of obtaining a *complete settlement* with West Virginia and an adjustment of a controversy which has vexed both States for a generation past; and as a part of this settlement and as a necessary incident to it, and in accordance with the manifest equitable rights of Virginia to have that settlement decreed—

First, in respect to some $25,000,000, including principal and interest, of the obligations of the original State, which have been paid off or retired by the Commonwealth of Virginia since her dismemberment and the vouchers for which transaction she now holds in her treasury; and as to this she invokes the equitable jurisdiction of this court for *contribution* from West Virginia to the extent of West Virginia's

liability on account of the common obligations which Virginia has thus paid off and retired; and,

Second, to obtain the *exoneration* to which she is entitled in respect to the unsettled and unfunded one-third of the debt of the undivided State, the obligations evidencing which have been deposited with her.

There is no possible conflict between or inconsistency in the two kindred and associated rights of contribution and of exoneration thus possessed by Virginia, or in the assertion of the same in one common suit. Indeed, it is proper and right that they should be asserted and united in one suit, and it would be ground of objection not to include them in one suit.

This would be true, even if there were more than one party, who had such rights, plaintiff to the bill; but, in the nature of things, there is and can be but one party plaintiff here, because there is only one Commonwealth of Virginia; and, as to her, "there is a common interest centering in the point of issue in the cause," and, in every phase and aspect of the cause, a common right in her capacity as a creditor of West Virginia in respect to so much of the common debt as Virginia has settled and paid off in full, and in her capacity of co-obligor of West Virginia as to so much of the common debt as remains unsatisfied, to have a settlement and ascertainment and adjudication of the equitable proportion of the debt of the undivided States which West Virginia should pay.

The effect and logical consequence of such an ascertainment and adjudication will necessarily be to obtain contribution to Virginia by West Virginia to the extent of West Virginia's equitable liability to make such contribution, and to obtain the exoneration of Virginia from any farther liability on account of the common debt of the old State; and this is the ultimate relief to which Virginia is justly and equitably entitled, upon the showing made by her bill.

Again, the two causes of complaint united in this bill, and on which relief is prayed, are:

1. The liability of West Virginia to Virginia for her reasonable and just contributive share of the public debt of Virginia as of the 1st of January, 1861.

This liability rests upon several distinct and evident grounds:

(*a*) On the principle of public law, that "where a State is divided into two or more States, in the adjustment of liabilities between each other the debts of the parent State should be ratably apportioned among them" (Hartman *vs.* Greenhow, 102 U. S., 877.

(*b*) On the ordinance of the convention of Virginia of August 20, 1861, "to provide for the formation of a new State out of the portion of the territory of this State," by section 9 of which ordinance it was provided that "the new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861," &c.

(*c*) On the constitution formed by the State of West Virginia and submitted to Congress, and on which West Virginia was admitted into the Union (Virginia *vs.* West Virginia, 11 Wall, 43).

By section 8 of article 8 of said constitution it was provided that—

> "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

2. Under and by virtue of the act of the General Assembly of the restored government of Virginia, passed February 3, 1863, property of the Commonwealth of Virginia, to the amount in value of several millions of dollars, was transferred from Virginia, and was delivered to and received by West Virginia, on the express condition that "the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State, provided that no such property stocks and credits shall have been obtained since the organization of the State government."

And by act of the same General Assembly, passed February 4, 1863, the sum of one hundred and fifty thousand dollars ($150,000) was appropriated and subsequently paid over to West Virginia, and by the same act all moneys and balances in the treasury of Virginia not otherwise appropriated were appropriated to the said State of West Virginia.

It is too plain and obvious to be questioned, that both of the two above-recited grounds of complaint grew out of and formed material parts of the same transaction, viz., the generation of the new State of West Virginia and its necessary sustenance and support while in her infancy. By her very birth, West Virginia incurred the liability for her just proportion of the public debt of Virginia. It was in fact and in law her debt as much as it was the debt of Virginia. She inherited it. It was congenital. Then, at her birth, West Virginia was wholly without resources or means for maintaining herself and continuing her political existence twenty-four hours save by the money and property of Virginia which fell into her hands. The appropriation of this money and property to the uses of West Virginia created a debt of so high an obligation that, even without the express condition on which it was given and received, she would be compelled to account for it.

Can there be doubt, then, for one moment that these two grounds of complaint are so intimately and essentially connected as that, had this complainant brought her separate

bill on each ground, this court would, to avoid so useless multiplicity of actions, have consolidated or caused them to be heard together? The people who appeared as the citizens of the restored government of Virginia and who formed the conventions and General Assemblys by which ordinances were framed for the creation of the new State of West Virginia—and consent was given in the name of Virginia for the creation of such new State—and who appropriated millions of dollars in value of the property of Virginia for the use of West Virginia were, it may be, in legal contemplation, citizens of Virginia up to the 20th day of June, 1863; but on that day these same people became citizens of West Virginia and thenceforth sat in conventions of her people and in her halls of legislation. But before this transformation took place, and in contemplation of its assured coming, they, as citizens of Virginia, appropriated all her property within their reach and gave it to the embryo State.

So it appears by the allegations of this bill, which must be taken here to be true, that West Virginia is justly liable on many grounds for a just proportion of the public debt of her parent State, Virginia; that West Virginia has not only repudiated and openly disavowed all such liability, but that she has appropriated to her own use a large amount in value of the public property of Virginia, which Virginia might properly have applied, as part of her public assets, to the payment of her public debt; and now, when by this bill in equity Virginia calls on West Virginia to account for the property which she has appropriated and applied to her own uses, and to come in before this court and have her proportion of the public debt ascertained, West Virginia, by her demurrer, protests that the part of the public debt which she owes and the part of the public assets which she has appropriated to her own use are two subjects of complaint so distinct and unconnected as should relieve her from making answer to the bill.

Counsel for the defendant rely upon the decision of this

court in the cases of New York *vs.* Louisiana and New Hampshire *vs.* Louisiana, 108 U. S., 78; but, as has already been made apparent, this case is entirely different in fact and in principle from those cases; indeed, there is no analogy between them.

Neither the State of New York or New Hampshire had any direct or personal interest in the bonds of Louisiana or in the subject-matters of controversy in those suits, but were mere volunteers, self-constituted trustees, without sustaining any relation, or interest, or obligation, or liability in regard to the bonds, or to any question presented in those causes.

While it may be true that, as to the custody of some of these unsatisfied bonds, Virginia sustains the relation of trustee, she has an enormous interest as to those bonds—an interest as substantial and as real, if not in fact as great, as if she had actually paid these bonds in full.

(2.)

The next ground of demurrer assigned by the defendant is:

> "That this court has no jurisdiction of either the parties to or the subject-matter of this action, because it appears by the said bill that the matters therein set forth do not constitute, within the meaning of the Constitution of the United States, such a controversy, or such controversies, between the Commonwealth of Virginia and the State of West Virginia as can be heard and determined in this court, and this court has no power to render or enforce any final judgment or decree thereon."

This ground of objection is based upon two postulates, each of which, we respectfully submit, is fallacious as applied to this case.

The first is, as we understand the position of defendant's counsel, that the judicial power of the United States and the jurisdiction conferred by section 2 of article III of the Con-

stitution of the United States upon the Supreme Court over "controversies between two or more States" does not embrace a controversy such as is presented here, or any other controversy which, like the one here, is based upon any pecuniary obligation or liability of a State; that while it does confer jurisdiction upon the Supreme Court of the United States over certain controversies between States, the word "controversy" as used in that section of the Constitution, does not embrace any controversy in regard to any pecuniary matter.

The second postulate which defendant's counsel must maintain to support the above objection is necessarily that the language of the Constitution referred to does not confer jurisdiction in any case in which the court has no power to render or enforce and make effective its final judgment thereon, and that this court cannot render or enforce its final judgment or decree making effective the relief sought by the plaintiff.

We will now consider this two fold ground of objection:

(*a*) Can it be true that the word "controversy" as thus used in section 2 of article III of the Constitution can be fairly given any such narrow construction and confined by any such forced and restricted limitations?

It will be observed that precisely the same word defines the jurisdiction of this court as to "controversies between citizens of different States."

Judge St. George Tucker, in discussing the judiciary clauses of the United States Constitution, says, in his appendix to Tucker's Blackstone, vol. 1, p. 120, edition of 1802:

> "The word 'controversies,' as here used, must be understood as relating to such as are of civil nature. It is probably unknown in any other sense, as I do not recollect ever to have heard the expression 'criminal controversy.' As here applied, it seems particularly appropriated to such disputes as might arise between the United States and any one or more States, respecting territorial *or fiscal* matters; or between the United States and their debtors, contractors

> and agents. This construction is confirmed by the application of the word in the ensuing clauses, where it evidently refers to disputes of a civil nature only, such, for example, as may arise between two or more States, or between citizens of different States, or between a State and the citizen of another State, none of which could possibly be supposed to relate to such as are of a criminal nature."

It is to be presumed that the framers of the Constitution did not design by the use of the same identical expression to confer one jurisdiction upon the federal courts as to matters of dispute between States and another jurisdiction as to matters of dispute between citizens of different States. In other words, if the words "controversies between two or more States" do not embrace, under any circumstances, in the one case controversies growing out of contracts or liabilities for the payment of money, the words "controversies between citizens of different States" cannot be fairly construed to embrace any controversies of a pecuniary character; and yet we are surely within limits when we say that a large majority of the "controversies between citizens of different States" of which the federal courts have from their foundation taken jurisdiction have been controversies arising out of contracts for the payment of money.

But it is urged that it is derogatory to the dignity of a State to have it impleaded in any court upon any contract, or obligation or promise which a State may have made.

Whether this be true or not is immaterial, if it be true (and as to this there can be no question) that the States, by coming into the Union and accepting the Constitution of the United States as their supreme law, have agreed to submit their controversies to the supreme tribunal created by that Constitution and clothed by it with jurisdiction of just such controversies.

And is it any more derogatory to the dignity of a State for it to be impleaded in this impartial tribunal in a contro-

versy involving such important and far-reaching questions of public obligation and of public right as are presented in this cause than it would be to be impleaded in this court upon the question as to whether one State had encroached upon the territorial limits of another State; or as to whether it was improperly allowing its citizens to pollute the waters flowing through its territory and by the territory of another State, or that it was in violation of the rights of a neighboring State, diverting, dissipating, and absorbing streams of water rising in one State and preventing their natural flow into the territory of another State; or that it was doing any one of the things for which States have been impleaded under jurisdiction recognized and approved by this Court?

We are unable to see that there is any surrender of the dignity of a State in that it submits, or, if recalcitrant, is compelled to submit, its controversies to the adjudication of a tribunal of its own creation and selection for the settlement of any question of controversy involving property rights, or any other direct interests of a State in its corporate capacity, or of the people of a State represented by the government of the State.

It is urged that a State cannot be sued without her consent; but, as has been repeatedly decided by this court, all of the States have, in most solemn form, given their consent to the jurisdiction of this court over all civil controversies which may arise between them.

A careful review of all of the decisions of this court which throw light upon this subject, we think, justifies us in the view that this is no longer a debatable question.

The word "controversy" as used in this section of the Constitution has been repeatedly passed upon and interpreted by this court. Not only has its meaning been fixed by this court in approving the jurisdiction taken by the circuit courts of the United States of hundreds of controversies of a pecuniary character "between citizens of different States, but it has been repeatedly given a similar significance and inter-

pretation, and the jurisdiction of this court sustained in respect to controversies to which States were parties and in respect to controversies to which the United States has been a party, as to which the definition and limitation of the jurisdiction conferred by the Constitution is defined by precisely the same word, "*controversies.*" And so we say that, if this court has no jurisdiction of any controversies arising out of demands for money, or obligations for the payment of money, between States, then neither this court nor any other federal court could have jurisdiction of any such pecuniary "controversy between citizens of different States," or of controversies to which a State is a party, or of a controversy to which the United States is a party, for in each case the jurisdiction is conferred by precisely the same language.

And such we understand to be the doctrine established by the decisions of this court.

The first case in which this question arose was that of Chisholm, ex'r, *vs.* Georgia, 2 Dal., p. 419, in which this court held that the judicial power of the United States and the original jurisdiction of the Supreme Court, as conferred by section 2, article III of the Constitution, embraced a demand for money asserted against a State by a citizen of another State in an ordinary action of assumpsit, and that such a case presented a "controversy" within the meaning of that section of the Constitution.

Mr. Justice Iredell alone dissented, not as to the construction given by the majority of the court to the word "controversy," but as to the decision of the majority of the court in construing section 2 of article III so as to extend the jurisdiction of the federal courts to a pecuniary demand asserted by a citizen of one State *against* another State. He held and argued that the language used in the Constitution, taken as a whole and construed in the light of the historical facts which he mentioned, was not designed to give the federal courts jurisdiction of a suit by any *individual* against a sovereign State upon any merely pecuniary demand; but

it is an exceedingly significant circumstance that Mr. Justice Iredell was constrained to hold, and he did declare, that—

> "The Supreme Court hath, therefore, first, *exclusive jurisdiction in every controversy of a civil nature: 1st. Between two or more States.* 2d. Between a State and a foreign State. 3d. Where a suit or proceeding is depending against ambassadors, other public ministers, or their domestics, or domestic servants. Second. Original, but not exclusive jurisdiction, 1st, between a State and citizens of other States. 2d. Between a State and foreign citizens or subjects. 3d. Where a suit is brought by ambassadors, or other public ministers. 4th. Where a consul or vice-consul, is a party."
>
> *Id.,* p. 431.

Had that suit, like this, been a suit between two States; had that been a suit by South Carolina *vs.* Georgia, upon a demand for money, there cannot be a doubt but that this court, as then constituted, would have unanimously maintained its jurisdiction. And such is the meaning and effect of the decision of all the Judges.

It may be fairly claimed that the ruling of the majority of the court in Chisholm, ex'r, *vs.* Georgia has been questioned, if not overruled, as to the suability of a State by any private citizen independently of the eleventh amendment, and the opinion of Mr. Justice Iredell in that case affirmed by the opinion of this court, as formulated by Mr. Justice Bradley in Hans *vs.* Louisiana, 134 U. S., p. 1; but it will be seen that Mr. Justice Bradley, in the interesting opinion referred to, affirms and approves the opinion and the views of Mr. Justice Iredell in the Chisholm case; and Mr. Justice Iredell, in his opinion so unqualifiedly affirmed, as we have seen, held that this court had jurisdiction *"in every controversy of a civil nature between two or more States,"* though he held that jurisdiction was not conferred upon it of a controversy between an individual plaintiff suing a State upon a pecuniary demand.

There can be no doubt that the decision and reasoning of all the judges in the case of Chisholm, ex'r, *vs.* Georgia confirms every contention made for the plaintiff in this case as to the rightful and necessary jurisdiction of this court over a controversy of the kind presented here between the Commonwealth of Virginia and the State of West Virginia.

The question of the nature and extent of the jurisdiction conferred upon this court by article III of the Constitution in respect to controversies to which a State is a party, and also as to controversies between two or more States, was exhaustively discussed by Chief Justice Marshall in Cohens *vs.* Virginia, 6 Wheat., pp. 364, 375-440.

In considering the effect of the adoption of the 11th amendment upon that jurisdiction the Chief Justice, at pages 405-6, says:

> "This leads to a consideration of the 11th amendment.
>
> "It is in these words: 'The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign State.'
>
> "It is a part of our history, that, at the adoption of the Constitution, all the States were greatly indebted; and the apprehension that these debts might be prosecuted in the federal courts formed a very serious objection to that instrument. Suits were instituted; and the court maintained its jurisdiction. The alarm was general; and, to quiet the apprehensions that were so extensively entertained, this amendment was proposed in Congress, and adopted by the State legislatures. That its motive was not to maintain the sovereignty of a State from the degradation supposed to attend a compulsory appearance before the tribunal of the nation, may be inferred from the terms of the amendment. It does not comprehend controversies between two or more States, or between a State and a foreign State. The jurisdiction of the court still extends to these cases; and in these a state

> may still be sued. We must ascribe the amendment, then, to some other cause than the dignity of a State. There is no difficulty in finding this cause. Those who were inhibited from commencing a suit against a State, or from prosecuting one which might be commenced before the adoption of the amendment, were persons who might probably be its creditors. *There was not much reason to fear that foreign or sister states would be creditors to any considerable amount, and there was reason to retain the jurisdiction of the court in those cases,* because it might be essential to the preservation of peace. *The amendment, therefore, extended to suits commenced or prosecuted by individuals, but not to those brought by States.*"

And at page 378, in defining the jurisdiction of this court in the class of cases in which its jurisdiction by the terms of the Constitution is determined by the character of the parties, the Chief Justice uses this language, which would seem to be conclusive as applied to this case:

> "In the second class, the jurisdiction depends *entirely* on the character of the *parties.* In this are comprehended 'controversies *between two or more States,* between a State and citizens of another State, and between a State and foreign States, citizens or subjects.' *If these be the parties, it is entirely unimportant what may be the subject of controversy.* Be it what it may, these parties have a constitutional right to come into the courts of the Union."

It has been argued that these rulings of the Chief Justice were *obiter dicta.* They were entirely pertinent to the great question which he was considering and had a direct bearing upon it. The question which the court had to review was what was the character of the controversies over which it had jurisdiction under article III of the Constitution, after the adoption of the 11th amendment; and it was necessary in that connection for the court to construe the word "controversy" as used in that article.

The opinion was one of the most lucid and ablest which ever came from the mind of the great Chief Justice. It was evidently well and carefully considered.

Under such circumstances a conclusion which he so deliberately reached and so clearly expressed ought to have the greatest weight.

It may also be justly claimed that the expressions in opinions in two or three later cases, which are claimed to be inconsistent with the views of Chief Justice Marshall, are all of them far more emphatically *obiter* than were his conclusions as above quoted.

It is to be presumed, of course, that the controversies to which the Chief Justice referred were controversies in a juridical sense; that is to say, justiciable controversies; but where has it ever been held by any court anywhere that a controversy arising out of a contract for the payment of money was not *justiciable?*

Since money supplanted barter in the dealings and contracts of mankind, and since courts for the adjudication of civil controversies have been established, a great part of the disputes which have grown out of the contracts of mankind have been controversies about the payment of money. They have not only been "solvable" by the courts, but they are generally more really "solvable," for principles of justice and right and more adequate relief can usually be administered in respect to them than in respect to some other descriptions of controversy which have been held to be justiciable by this court. For instance, the prevention of the flow of polluted water from the State under whose authority it has been contaminated, along the borders of another State, the health of whose inhabitants is prejudiced by the flow of such polluted water by their shores, as in Missouri *vs.* Illinois, 180 U. S., p. 208; or the prevention of the undue retarding and diminution of the natural flow of rivers by the State in which they have their source into the State through which they have their natural exit, as in

Kansas *vs.* Colorado, 185 U. S., p. 125; or, indeed, the establishment of a disputed boundary line between coterminous States, as in Rhode Island *vs.* Massachusetts, and a number of later cases where this court has taken jurisdiction of such controversies.

In Missouri *vs.* Illinois, 180 U. S., 240, Mr. Justice Shiras, after reviewing at great length the cases decided under the constitutional provision giving this court original jurisdiction in controversies between two States says:

> "The cases cited show that such jurisdiction has been exercised in cases involving boundaries and jurisdiction over lands and their inhabitants, and in cases *directly affecting the property, rights and interests of a State.* But such cases manifestly do not cover the entire field in which such controversies may arise, and for which the Constitution has provided a remedy; and it would be objectionable, and indeed, impossible, for the court to anticipate by definition what controversies can and what cannot be brought within the original jurisdiction of this court."

This question has been directly passed upon by this court and its jurisdiction over controversies arising upon pecuniary demands has been sustained in—

Georgia *vs.* Brailsford, 2 Del., p. 402;
Texas *vs.* White, 7 Wal., p. 700;
Florida *vs.* Anderson, 91 U. S., p. 667;
Alabama *vs.* Burr *et als.*, 115 U. S., p. 413;

and even more emphatically and conclusively in—

United States *vs.* North Carolina, 136 U. S., p. 211;
United States *vs.* Texas, 143 U. S., p. 621; and
United States *vs.* Michigan, 190 U. S., pp. 379, 396, 406.

The three last cases would seem to be entirely decisive of the question.

The very language under which this court took jurisdic-

tion of these cases, all involving pecuniary demands of the United States against the several defendant States, is used in the Constitution to confer jurisdiction upon this court of controversies between States; and if that language in the one case gave this court jurisdiction of a controversy arising out of, or asserted upon, a pecuniary demand, by a logical and inevitable consequence it gives this court jurisdiction of a similar controversy between States.

It may possibly be contended that the question of jurisdiction was not raised in United States *vs.* North Carolina, 136 U. S., p. 211, but such a contention would be idle, because this court, and no other federal court, according to the uniform decisions of this court, can, even by consent of parties, exercise jurisdiction in any case in which such jurisdiction has not been conferred upon it by the Constitution or by valid act of Congress.

This question arose in United States *vs.* Texas, 143 U. S., p. 621, *supra*, where, at page 642, this court, through Mr. Justice Harlan delivering its opinion, said:

> "The cases in this court show that the framers of the Constitution did provide, by that instrument, for the judicial determination *of all cases in law and equity between two or more States*, including those involving questions of boundary. Did they omit to provide for the judicial determination of controversies arising between the United States and one or more of the States of the Union? This question is in effect answered by United States *v.* North Carolina, 136 U. S., 211. That was an action of debt brought in this court by the United States against the State of North Carolina, upon certain bonds issued by that State. The State appeared, the case was determined here upon its merits, and judgment was rendered for the State. *It is true that no question was made as to the jurisdiction of this court, and nothing was therefore said in the opinion upon that subject. But it did not escape the attention of the court, and the judgment would not have been rendered except upon the theory that this court has original jurisdiction of a suit by the United States against a State.*"

And it unquestionably arose and was passed upon in United States *vs.* Michigan, 190 U. S., pp. 379, 396, 406, which was a suit for the recovery of money, in which this court, Mr. Justice Peckham delivering its unanimous opinion, at page 396 held:

> "By its bill the United States invokes the original jurisdiction of this court for the purpose of determining a controversy existing between it and the State of Michigan. This court has jurisdiction of such a controversy, although it is not literally between two States, the United States being a party on the one side and a State on the other. This was decided in United States *v.* Texas, 143 U. S., 621, 642; 36 L. Ed., 285, 292; 12 Sup. Ct. Rep., 488."

Such was also the effect of the decision of the majority of the court in South Dakota *vs.* North Carolina, 192 U. S., p. 286; and there is nothing in the dissenting opinion of the minority of the court in that case inconsistent with the views for which we contend.

Again, we say that it seems to us the question is no longer a debatable one in this court.

(*b*) Is there anything in the contention that this court cannot hear and determine the questions presented in this case because it has, as is alleged, no power to render or enforce any final judgment or decree therein?

Let us see, first, what is the precise character of this suit and what is the relief sought, a total misconception of which must have occasioned the assignment of the ground of demurrer now being considered.

The main and real object of the suit is a settlement with West Virginia, and to this end a determination and adjudication by this court of the amount due by that State to Virginia, upon the state of facts set forth in the bill.

West Virginia having refused to have any accounting, or even to negotiate with Virginia upon the subject, it became

necessary to invoke the equitable jurisdiction of this court in order that it might ascertain, determine, and adjudge the proportion of the debt of the original State which it would be equitable for West Virginia to pay.

The Commonwealth of Virginia would be loath to believe that any State of the American Union would disregard or disobey any decree of this, the tribunal selected and empowered by all of the States as the final arbiter of all civil controversies which may arise between them, and did not consider it necessary in any such case, or proper under the circumstances of this case, to insert in her bill a special prayer asking this court to summarily enforce its decree against West Virginia.

She cherishes the hope that there would never be any occasion to ask the court to award any execution or take any action for the purpose of enforcing such judgment as it shall render.

If such occasion should ever arise, it will be for the court to then decide by what process or further action it would proceed to execute its decree.

It will be time enough when the proper accounts have been taken, and the balance ascertained, and the sovereign State against whom such balance may be found has repudiated the liability and refused to pay such balance, to consider and decide whether the power resides in this court and the means are at its hand to enforce the payment of the amount so found to be due.

It is enough for present purposes to know that all the States in the Union have, by the Constitution of their general Government, covenanted and agreed in the most solemn form that "the judicial power shall extend to controversies between two or more States," and that "in all those cases in which a State shall be a party the Supreme Court shall have original jurisdiction."

> "The Constitution of the United States, with all the powers conferred by it on the General Govern-

ment and surrendered by the States, was the voluntary act of the people of the several States, deliberately done, for their own protection and safety against injustice from one another."

Ableman *vs.* Booth, 21 How., p. 521.

"Some tribunal exercising such authority, is essential to prevent an appeal to the sword and a dissolution of the Government."

2 Story on Constitution, sec. 1681.

The Supreme Court hath exclusive jurisdiction in every controversy of a civil nature between two or more States.

Chisholm *vs.* Georgia, 2 Dall., 2d ed., p. 430.

These cases hold that questions of boundary, territorial right, and property rights of all kinds are proper for this jurisdiction.

2 Tucker's Constitution, p. 784.

Indeed it may be needless to consider at all the question of whether, when a decree shall be made ascertaining the amount due by West Virginia, on a full adjustment and accounting between the two States, how such amount can be obtained from the debtor State. We may accept as sound and true the statement made by Mr. Webster in his letter to Baring Brothers (Webster's Works, vol. 6, p. 539), that "the security for State loans is the plighted faith of the State as a political community, resting on the same basis as other contracts with established governments; that is to say, the good faith of the government making the loan, and its ability to fulfill engagements." We may admit that this is the only sanction and security on which an individual who is a public creditor may rely; that this arises on the creation of the debt and continues so long as the debt exists. We recognize that no sovereign State, of whatever form of government, can clothe an individual or another State with power to seize by force upon its treasury and appropriate its

resources without regard to the needs, policies, or will of the debtor State.

Every day judgments are rendered by this court against the United States for money demands on appeals from the Court of Claims; but nowhere is power given to this court to award execution of *fiere facias* against the United States. Awards are made by high tribunals and commissions to whose arbitrament claims for money against empires, kingdoms, and republics have been submitted, but never has power been given to these courts to enforce by judicial process or physical force the payment or satisfaction of the amounts which they may ascertain to be due.

Only by appropriation, regularly made by the legislative branch of the Government, is provision ever made for the payment of claims, whether ascertained by judgment, award, or other legal form. To that branch of the Government alone may we look for the fulfillment of "the good faith of the Government."

We here invoke the exercise of a long-established ground of equitable jurisdiction when, on the case stated in the bill, we ask that an accounting be had, and that such other and further relief be granted as the nature of the case may require and in equity may be meet.

It is true that in the case of Gordon *vs.* United States the Supreme Court declined to take jurisdiction of the case on appeal from the final action of the Court of Claims, on the ground that no power had been conferred upon the court to enforce its judgment, Chief Justice Taney in the opinion saying:

> "nor can Congress authorize or require this court to express an opinion on a case where its judicial power could not be exercised and where its judgment would not be final and conclusive on the rights of the parties, and process of execution awarded to carry it into effect.
>
> "The award of execution is a part, and an essential part, of every judgment passed by a court exercising

judicial power. It is no judgment, in the legal sense of the term, without it. Without such an award the judgment would be inoperative and nugatory, leaving the aggrieved party without a remedy," &c.

Gordon *vs.* United States (Appendix), 117 U. S., p. 697.

(Although a grave doubt exists as to the authenticity and accuracy of this alleged opinion.)

This language was used in considering and deciding a question of jurisdiction of the Court of Claims where the judicial power of the United States had not been conferred on it by Congress. It is not applicable to the question presented here, which is not as to the jurisdiction of the court, but as to its power to enforce its writ of execution against a State. The question here is not as to the power of the arm to strike, but as to the immunity of the object from wounds.

Whether property or funds of West Virginia within the jurisdiction of this court, other than property used distinctly for governmental purposes, would be liable to seizure, levy, garnishment, or sale in execution of or for the purpose of coercing compliance with any such decree is a question which we trust will never arise; for we are persuaded that any decree which this court shall render will be accepted by both parties as final and binding and will be respected and obeyed. But if a decree shall be rendered against West Virginia, and that State shall fail or refuse to respect it and to comply with its terms, it will be time enough then for this court to decide what farther action shall be taken in the enforcement of its decree.

The supreme court of Louisiana, in the case of *Carter vs. State*, 42 La. Annual, 930, in an opinion delivered by Judge Fenner, has shown why, from the character of the party, a writ of *fieri facias* should not be awarded, and cannot be enforced against a State.

"Legislative acts authorizing individuals to sue the State upon claims which the Legislature, for any cause, does not see fit to recognize and pay, have been of common occurrence in this and in other States. Their purpose and effect, as commonly understood, are undoubtedly nothing more than to refer to the judiciary the settlement of the questions of law and fact involved in the claims, and the determination, in the form of a judgment, of the rights of the parties. It is implied, as a matter of course, that the legislative power, after making such a reference, will accept and abide by the judicial determination, will recognize the judgment rendered as final and conclusive, and will, in due and ordinary course, make provision for the satisfaction thereof.

"That such was the interpretation of his remedy, adopted by the plaintiff himself, is evinced by his applications to successive General Assemblies for an appropriation to satisfy his judgment.

"But to assume that, by consenting to be sued, the Legislature intended to abdicate its constitutional function of controlling and administering the public funds and property and of appropriating them to such lawful purposes as it may deem best, and to delegate to the judicial department the power of seizing such property and applying it to the payment of a particular debt, would be, beyond measure, rash and unjustifiable. No such intention is expressed in the act or can be fairly implied from its terms; and we consider it beyond question that no such ever entered into the mind of any member of the legislative body. The incidents and appurtenances of ordinary jurisdiction have no application to a case like this. Undoubtedly jurisdiction granted to render judgments between parties subject to judicial power and control implies power to execute such judgments. But the sovereign is not subject to judicial power and control, except just so far as it has consented thereto; the moment the limit of that consent is reached the judiciary must instantly halt. Satisfied as we are that the Legislature has not consented and did not intend to consent to the execution of this judgment by writ of *fieri facias*, we are bound to deny such remedy.

"Counsel asks, of what use is the power to render judgment against the State, if the court is powerless to execute the judgment? That question was anticipated by Mr. Hamilton in the discussion of the Constitution of the United States before its final adoption. 'To what purpose,' he asked, 'would it be to authorize suits against sovereign States for the debts they owe? How could recoveries be enforced? It is evident that it could not be done without waging war against the contracting State.' Federalist, No. 81. He never dreamed that authorizing suit against a State would imply the right to issue *fieri facias* on the judgment.

"Puffendorf says: 'And if the prince gives the subject leave to enter an action against him in his own courts, the action itself proceeds rather upon natural equity than on municipal laws. For the end of the action is not to *compel* the prince to observe the contract, but to *persuade* him.'

"In England claims against the Crown might be prosecuted before certain courts, in the form of petitions of right, with the consent of the King, but it was held by Lord Mansfield that 'if there were a recovery against the Crown, application must be made to Parliament, and it would come under the head of supplies for the year.'"

Macbeth *vs.* Haldimand, 1 Durn. & East., 172.

We have examined all the authorities quoted by counsel, and find none of them to support his contention. We are quite certain that no precedent exists sustaining the issuance of a *fieri facias* on a judgment against a sovereign State in her own courts, though rendered with her own consent.

The only recourse for satisfaction is by application to the Legislature, with whom the judgment should surely have great *persuasive* force, but none *compulsive*.

In United States *vs.* North Carolina, 136 U. S., p. 211, *supra,* this court took jurisdiction of a suit brought by the United States against that State for money due upon bonds held by the United States.

In United States *vs.* Michigan, 190 U. S., pp. 377-406, already referred to, this court again took jurisdiction of a

suit against Michigan for the recovery of money. At the conclusion of its opinion, at page 406, this court unanimously decided that—

> "There must be a judgment overruling the demurrer, but as the defendant may desire to set up facts which it might claim would be a defense to the complainant's bill, we grant leave to the defendant to answer up to the first day of the next term of this court. *In case it refuses to plead further, the judgment will be in favor of the United States for an accounting, and for the payment of the sum found due thereon.*"

Every writ, process, and remedy which would be available for the enforcement of such a judgment, or for the decree prayed for by the plaintiff in United States *vs.* North Carolina, 136 U. S., p. 211, *supra*, would be available for the enforcement of a decree in this case adjudicating the amount of West Virginia's equitable contributive share of the ante-bellum debt of Virginia.

If such decree in United States *vs.* North Carolina, or the judgment directed in United States *vs.* Michigan, could not be summarily or effectively enforced, then it may be that a final decree in this case cannot be so enforced.

But it is equally true, and it is a truth which should conclusively dispose of this ground relied upon in the demurrer, that if the inability of this court to award any execution or frame any writ which would enable the United States to enforce any such decree or judgment against North Carolina or against Michigan did not defeat the jurisdiction of this court in the suits against those States, a similar inability to summarily enforce a decree in this case against West Virginia by execution, levy and sale cannot defeat the jurisdiction of this court in this suit against that State for a settlement, ascertainment, and adjudication of the state of the accounts between the two States.

It is impossible by any conceivable process of right rea-

soning to apply any principle to the case at bar which would defeat the jurisdiction of this court, upon the ground here discussed, which would not have deprived this court of its jurisdiction in each of the cases just considered.

And so upon this alleged ground of demurrer we conclude that the bill presents a controversy between the plaintiff and defendant States justiciable and solvable in this court, and that the jurisdiction of the court will not be defeated because it may be that the plaintiff may not be able to collect from the defendant, or this court may be unable to compel the defendant to actually pay such sum as the court may adjudge and decree to be due by the defendant.

(3.)

To the third ground assigned in defendant's demurrer, namely,

> "That it appears by said bill that the plaintiff herein sues as trustee for the benefit of a number of individuals who are the alleged owners of certain certificates in the said bill set forth and described,"

our reply is that this assignment is founded upon mistake. It is not true that Virginia sues as trustee for the individuals mentioned or for any other persons. She sues in her own name and for her own benefit, in vindication of her own rights and for her own protection.

It is true that if the relief which she seeks is accorded her it will not only enure to her benefit, but necessarily to the benefit of all of the creditors of the undivided State, as well those who have deposited their unsatisfied bonds in her keeping as those who have never funded the bonds of the original State held by them; as well also those whose bonds and certificates are represented by the "depositing committee," who made the contract which is copied in the bill, as those whose bonds and certificates have not been so deposited. It is true that

the amount of the unfunded bonds and of said certificates which are not represented by said "depositing committee" is comparatively small, but they aggregate over a million dollars. Whether their holdings are large or small, this suit must necessarily enure to their benefit, as it must also to the benefit of all of the unsatisfied creditors of Virginia, for the reason that Virginia cannot obtain the exoneration to which she is entitled unless West Virginia's equitable share of liability upon every bond and obligation of the undivided State shall be ascertained and adjudicated.

Indeed, a little reflection will show it to be true, that the amount and extent of West Virginia's liability in respect to any one of the original bonds representing Virginia's ante-bellum debt could not be ascertained without at the same time by the same token ascertaining her aliquot liability as to all of the others of those bonds.

It will be seen at once that this is true, for under the Wheeling ordinance and the first constitution of West Virginia, framed and adopted in pursuance and effectuation of that ordinance, and under the contract thereby created between Virginia and West Virginia, it would be impossible to determine what part of any particular bond West Virginia is legally and equitably bound to pay without first ascertaining what is the equitable proportion of the entire ante-bellum indebtedness of the undivided State.

And so no suit could be brought by Virginia against West Virginia; and, indeed, if an individual could legally institute and prosecute such a suit, no suit could be brought by any individual holder of a single one or any larger number of the bonds of the original State against West Virginia for a settlement and be prosecuted to a finality without an ascertainment of West Virginia's share of the entire indebtedness.

But Virginia's status in reference to this suit and her relation to the bonds deposited with her and the relief she seeks, and to which the bill shows her to be entitled in respect to

those bonds and to the whole case, have been already fully discussed in the foregoing part of this brief and they need not be further treated here.

It is true that in the prayer for general relief Virginia asks that—

> "all proper accounts be taken to determine and ascertain the balance due from the State of West Virginia to your oratrix in her own right and as trustee as aforesaid."

But this, we submit, does not convert the suit which she has brought in her own name and right into a suit by her *as trustee;* for, in the settlement of the accounts which this court may hereafter direct to be taken between Virginia and West Virginia it will be convenient, if not necessary, in the ascertainment of West Virginia's contributive proportion of the original public debt of the Commonwealth of Virginia to show the amounts due to Virginia in her own right and also as trustee. Indeed, the prayer of the bill for the ascertainment of the amount due by West Virginia upon the bonds held by Virginia as trustee might be omitted without impairing the character and effect of the bill.

The paramount and controlling equity which Virginia asserts and relies on, is her right to have a settlement and accounting between West Virginia and herself of all the matters growing out of the partition of her territory and the adjustment and determination of the respective rights and liabilities of the two States. This, we submit, is Virginia's right, and it is not affected by any questions that may be suggested as to the disposition she may make of whatever amount may be decreed by this court to be due to her.

It may be true that she has pledged in advance the full amount of any such recovery to the payment ratably of certain of her old debts, or even that she has made a declaration of trust as to such amount in favor of those creditors; but those are matters which cannot be considered on this

demurrer. They are in nowise involved in the ground of equitable jurisdiction invoked by this bill. Virginia's right to compel contributions from West Virginia to the satisfaction of a common liability cannot be impaired or at all affected by the fact that Virginia has declared her purpose to apply the amount recovered to the payment of her debts.

They are matters which may, and doubtless will, be laid before the master to whom the settlement and statement of the account is intrusted, or they may have to be considered and passed on by this court, in the directions it may give to the master for his guidance in the execution of the order of reference; but they form no proper subject for consideration or action by the court at this stage of the case. The only question presented for decision now is, Has Virginia shown by her bill a proper case for the relief asked, of an accounting and for contribution from West Virginia?

(4.)

The fourth assignment of grounds of demurrer is so general in its terms that it is difficult to make to it a specific reply. It is as follows:

> "That the said bill does not state facts sufficient to entitle the Commonwealth of Virginia to the relief prayed for, or to any relief, either in her own right or as trustee for the owners of the certificates therein set forth and described."

This contention rests largely upon the same grounds upon which the second assignment is based, and the reply to it is very much the same, which is a conclusive answer to that assignment, and the importance of the case will justify some iteration in stating this reply.

The case stated in the bill must on this demurrer be taken to be true as to the facts charged. Among the facts charged are the following, viz:

1. That the restored State of Virginia, in convention assembled, did, on the 20th day of August, 1861, adopt an ordinance:

> "To provide for the formation of a new State out of the portion of the territory of this State."

That section 9 of that ordinance was as follows, viz:

> "9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, &c., as above quoted."

2. That on the 31st of December, 1862, the Congress of the United States, by act, provided that the new State, thus formed in pursuance of said ordinance, should be admitted into the Union by the name of West Virginia.

3. That on the 20th of June, 1863, the State of West Virginia was accordingly admitted.

4. That by act of the General Assembly of the restored State of Virginia, passed February 3, 1863, all property—real, personal, and mixed—owned by Virginia, but situated within the proposed boundaries of West Virginia, was granted and transferred to West Virginia upon the condition, viz, that—

> "The State of West Virginia shall duly account for the same in the settlement hereafter to be made with this State," &c.

5. That under and by virtue of said act there was actually received and enjoyed by the State of West Virginia property of the Commonwealth of Virginia amounting in value to several millions of dollars.

6. That by act of the General Assembly of the restored State of Virginia, passed February 4, 1863, there was appro-

priated to the State of West Virginia from the public moneys of Virginia the sum of $150,000; and there was further appropriated "*all moneys* not otherwise appropriated then" and that may come into the treasury up to the time when the State of West Virginia shall become one of the United States.

7. That by section 8 of article 8 of the constitution framed and adopted by the State of West Virginia, and under and in accordance with and by reason of which she was admitted into the Union of States, it was provided:

> "8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State and the legislature shall ascertain the same as soon as may be practicable—and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

8. That the legislature of West Virginia never ascertained the amount of West Virginia's "equitable proportion" of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861; that the State of West Virginia has never accounted for the property of the Commonwealth of Virginia which was turned over to and received by her, amounting in value to several millions of dollars; that the State of West Virginia has failed and refused through a period of forty years, and in the face of repeated solicitations on the part of Virginia, to enter upon any settlement of the accounts between herself and Virginia, but has oftentimes and but recently, through one or the other of the two houses of her legislature, declared that she would not recognize any liability whatever as resting upon her to the Commonwealth of Virginia.

Wherefore, and by reason of the matters of fact aptly charged in the bill, it is manifest that a controversy is pre-

sented between the Commonwealth of Virginia and the State of West Virginia to which the judicial power of the United States extends and as to which this court has original jurisdiction.

West Virginia obtained the consent of the restored State of Virginia to the erection upon the territory of Virginia of this new State, and she procured the aid of the Senators and Representatives of Virginia in Congress in having her invested with sovereignty and admitted into the Union upon the express terms of the "Wheeling ordinance," which bound her to *"take upon herself a just proportion* of the public debt of the Commonwealth of Virginia."

West Virginia obtained admission into the Union of States on an express undertaking in her constitution that—

> "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, shall be assumed by this State."

West Virginia received and applied to her own uses property belonging to the Commonwealth of Virginia to the amount in value of several millions of dollars, on the express condition that she would *"duly account for the same in the settlement hereafter to be made with this State."*

Hence it is evident that the "demand" referred to in this branch of the first ground of demurrer is not, as there assumed, "a simple demand for money," but it is a prayer that the *accounting*, so solemnly promised, may now be had, under the direction of this court.

The bill presents a state of facts from which it appears that the case is one for the exercise of the equitable jurisdiction of account upon some of the most important grounds upon which that jurisdiction can be invoked, according to the authorities and precedents.

(*a*) There have been in the first place complicated transactions running back to the creation of this new State, and

back of that for about thirty years, embracing numerous loans made by the original State of Virginia and a large number of expenditures of the money thus borrowed in the construction of internal improvements outside and inside the territory now constituting West Virginia.

Any such settlement would necessitate, first, an ascertainment of the amount of the public debt of Virginia as of January 1, 1861, a matter which in itself would require the services of a skillful and painstaking accountant.

There would also have to be an ascertainment of a great multitude of items of expenditure made by the old State within the limits of what is now West Virginia, and of a vast number of payments made in the shape of taxes by the people living in that territory towards the support of the State government, in each case, from the date of the inception of the State debt down to the 1st of January, 1861.

There would have to be, moreover, a determination of what was the proportion of the general expenses of the State government equitably chargeable against the counties and cities now constituting West Virginia during the same period. All of this, and more than is indicated here, would have to be ascertained in order to furnish the data upon which to ascertain the just proportion of the debt of the Commonwealth which West Virginia can be required or expected to pay upon the basis prescribed in the Wheeling ordinance.

These complicated statements, and the accounting necessary to evolve from them accurately, fairly, and justly the share of the common indebtedness which can be equitably assigned to West Virginia, alone would furnish an amply sufficient justification for a resort to a court of equity for an account.

But, in addition to this ground, there are others which even more emphatically call for the equitable relief to which the bill shows the plaintiff to be entitled.

(*a*) Prominent among these is the plaintiff's right to contribution. The basis of this right has been already fully stated in this brief, and in the bill. (See paragraph XVI, p. 16 of the bill.)

As to the right to invoke the aid of a court of equity to establish the right to contribution, see

1 Madd Chy., 233, star page 234.
Ex parte Gifford, 6 Ves., p. 808.
Lawson *vs.* Wright, 1 Cox, p. 276.
Collyer on Partnership, secs. 2-3, ch. 8.
1 Story's Eq., sec. 504.
Wright *vs.* Hunter, 5 Ves., p. 792.
Wills *vs.* Hubbell's Adm'r, 2 Johns. Chy. R., 401.

(*b*) Another ground for equitable jurisdiction recognized by all of the authorities upon equitable jurisprudence and practice is the plaintiff's right to exoneration upon the facts stated in the bill and already fully stated in the former part of this brief.

(*c*) Another ground for equitable relief shown by the bill is the accounting necessary to ascertain what money and property, stocks, and other assets of Virginia were transferred to and received by West Virginia under the acts of the General Assembly of Virginia of February 3 and 4, 1863. (See pp. 4, 5, and 6, paragraphs VIII and IX of the bill.)

(*d*) Another ground for the exercise of equitable jurisdiction shown by the bill is the avoidance of a multiplicity of suits. Virginia sustains, as appears from the bill, various associated relations in respect to West Virginia, all affecting the property and pecuniary rights of the two States, all growing out of the formation of the new State, closely related to the partition of the territory and property and the apportionment of the common indebtedness of the undivided

State, and all necessarily factors to be considered in making any satisfactory or final settlement between the two States.

First. Virginia holds obligations and evidences of indebtedness of the undivided State great in number and large in aggregate amount, paid off or retired by her, doubtless, at different times and under variant circumstances, but each of them giving her a claim against West Virginia to be reimbursed to the extent of West Virginia's liability therefor.

Second. She is entitled to have West Virginia make proper remuneration to her or give her proper credit for the money and property of Virginia which West Virginia received under the acts of February 3 and 4, 1863.

Third. She is entitled to exoneration to the extent of West Virginia's equitable liability upon the various transactions set forth in the bill, hereinbefore fully stated.

It is not only proper, but it is alike West Virginia's and Virginia's right and to their interest, to have the settlement of all of these associated claims and transactions made in one suit, instead of the parties being harassed by a number of suits for the equitable adjustment of matters which can be far more satisfactorily, intelligently, and fairly considered and adjudicated in one suit.

(5.)

The fifth ground assigned in the amended demurrer—

> "That it does not appear by said bill that the Attorney-General has ever been authorized to institute and prosecute this suit in the name of the Commonwealth of Virginia in her own right, but only as trustee for the use and benefit of the owners of certain certificates mentioned in the act of March 6,

> 1900, which is referred to and made part of said bill,"

is refuted by the bill. In support of this statement it is only necessary to refer to the following parts of the bill.

The act of the General Assembly of Virginia approved March 6, 1900, printed at pages 41-42 of the bill, entitled

> "An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth in the premises,"

in the second section thereof authorized the Virginia Debt Commission, appointed under the joint resolution of March 6, 1894, upon certain conditions mentioned in that section,

> "by and with the advice and approval of the Attorney-General of Virginia to take such action and institute such proceedings on behalf of the State as may in the judgment of the commission and the Attorney-General be needful and proper *to protect the interest of the State, and bring about and carry into effect a settlement as aforesaid.*"

The bill avers (paragraph xx, p. 11) that—

> "This suit has been instituted at the request and direction of said commission, and in strict conformity with the provisions of said act of March 6, 1900."

The exhibits filed with and as part of the bill, and particularly the report made by said commission to the General Assembly of Virginia on the 9th of January, 1906, Exhibit No. 8, pages 43-50 of the bill, prove the truth of this allegation, though its truth, of course, cannot be questioned by the demurrant.

(6.)

The sixth ground of demurrer assigned in the amended demurrer is:

> "That the said bill does not sufficiently and definitely set forth the claims and demands relied upon, but the allegations thereof are so indefinitely (*sic*) and uncertain that no proper answer can be made thereto."

The bill, with as much exactness and particularity as is possible under the circumstances, sets forth with much detail the facts upon which the plaintiff claims to be entitled to relief.

It is as full and precise in asserting the demands which it asserts against the defendant as it is reasonably practicable to make those allegations without first having had the accounting with the defendant which is the primary relief for which the bill prays.

If Virginia could, without such an accounting with West Virginia, state with definiteness just what is the sum West Virginia should pay to Virginia, an action of assumpsit might have sufficed; but no remedy at law could give her the relief to which she is entitled by way of exoneration, nor is there any adequate remedy at law by which the complicated and more or less intricate accounts can be so digested and stated upon equitable principles as to reach a result which will be just to the parties.

(7.)

The seventh assignment made by defendant's amended demurrer is:

> "That the allegations in the said bill are not sufficient to entitle the plaintiff therein, either in her own right or as trustee, to an account or to a discovery from this defendant."

This has been already answered in the answers made to other alleged objections to the bill. The plaintiff's right to an account is unquestionable upon any one of the several grounds already discussed; and a plaintiff is entitled to discovery in any case in which any right to equitable relief exists, and the defendant is in possession of any information, documents, or records which may throw any light upon the questions at issue or facilitate a just solution of those questions.

(8.)

The eighth and last ground of demurrer assigned is:

> "That the said bill does not contain any prayer for a judgment or decree or any other final relief against this defendant."

This objection is possibly even more technical than some of the others presented in the demurrers.

It was not necessary under the English chancery practice, adopted by this court in 1792 for the guidance and direction of suitors and practitioners therein, to have any prayer at all for special relief.

Under the prayer for general relief the plaintiff could obtain all such relief as he was found by the chancellor to be entitled to upon the state of facts alleged in his bill and established by his proofs.

> "The old bills in chancery did not contain any special statement of relief, but only what is called the prayer for general relief." * * *
> Adams' Eq., m. p. 309.
> Mitford's Pleading, m. p. 39.
> Cook *vs.* Martin, 2 Atk., p. 141.

Under later practice in England, the prayer for general relief was still held to be sufficient, though it became the uniform practice to insert a special prayer, and to conclude with the prayer for general relief.

Adams' Eq., m. p. 309.

But there are prayers in the bill for special relief, namely,

> "that the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your oratrix, in her own right and as trustee as aforesaid; that the principles upon which such accounting shall be had may be ascertained and declared, and a true and proper settlement made of the matters and things above recited and set forth; that such accounting be had and settlement made under the supervision and direction of this court by such auditor or master as may by the court be selected and empowered to that end, and that proper and full reports of such accounting and settlement may be made to this court; that the State of West Virginia may be required to produce before such auditor or master, so to be appointed, all such official entries, documents, reports and proceedings as may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth, in order to a full and correct settlement and adjustment of the accounts between the two States; that this court will adjudicate and determine the amount due to your oratrix by the State of West Virginia in the premises;'

These prayers not only ask for the specific relief stated, but that "the court will adjudicate and determine the amount due to your oratrix by the State of West Virginia."

An adjudication is a solemn judgment of a court. The word "adjudicate" is defined to mean:

> "To determine in the exercise of judicial power; to pronounce judgment in a case" (Anderson's Dict. of Law).
>
> "Synonymous with adjudge in its strictest sense" (Abbott's L. Dict.).
>
> "To determine judicially; try and decide; adjudge" (Standard Dictionary).

So a prayer for an adjudication by the court is a prayer for a judgment.

But such a prayer is unnecessary in a bill invoking the chancery jurisdiction of account.

The judgment or decree upon the account when taken and confirmed by the court is a necessary incident to the relief sought:

> "for it is implied if not expressed in the decree to account that the balance shall be paid to the party entitled."
>
> 1 Madd Chy. Pr.; title, Account, p. 86.

But where there is a prayer for special relief which does not adequately define *or even inaccurately state* the relief to which the plaintiff is shown upon the case presented to be equitably entitled, such relief as is adequate and appropriate to the case can and should be granted by the court.

1 Daniell's Chy. Pr., ed. 1846, p. 434.

The modern English practice is

> "to pray particular relief, though if the particular relief prayed for in the bill cannot be given exactly as prayed, the court will assist the particular prayer under the general prayer; but relief inconsistent with the specific relief prayed, cannot be given under the general prayer."
>
> 2 Madd Chy., m. p. 172.
> Beaumont *vs.* Beaumont, 5 Ves., p. 495.
> Muckleston and Brown, 6 Ves., p. 52.

The proposition asserted in this eighth assignment is negatived by repeated decisions of this court.

It will be noted that the bill contains prayers for special relief and also a prayer for "all such other, further and general relief as the nature of the case may require and to equity may seem meet."

In English *vs.* Foxhall, 2 Peters, p. 612, this court declared that—

> "There is no doubt but that, under the general prayer, other relief may be granted than that which is particularly prayed. But such relief must be agreeable to the case made by the bill."

And in Watts and others *vs.* Waddle and others, 6 Peters, pp. 389-403, this court said:

> "Although there is no specific prayer in the bill to be paid the rents and profits, yet the court think that under the general prayer this relief can be granted. *Under this prayer any relief may be given for which the basis is laid in the bill.*"

And in Walden, &c., *vs.* Boley and others, 14 Peters, pp. 164-5, this court decided that—

> "A court of equity cannot act upon a case which is not fairly made by the bill and answer. *But it is not necessary that these should point out in detail the means which the court shall adopt in giving relief.* Under the general prayer of relief, the court will often extend relief beyond the specific prayer, and not exactly in accordance with it."

See also, to same effect—
Boone *vs.* Chiles, 10 Peters, p. 177.
Stevens *vs.* Gladding, 17 How., p. 455.
Georgia *vs.* Stanton, 6 Wall., p. 50.
Texas *vs.* Hardenburg, 10 Wall., p. 86.
Jones *vs.* Van Doren, 130 U. S., p. 692.
Hayward *vs.* Eliot Nat. Bank, 96 U. S., p. 611.
Lockhart *vs.* Leeds, 195 U. S., pp. 427-437.

In the case cited this court decided that—

> "There is nothing in the intricacy of equity pleading that prevents the plaintiff from obtaining the relief under the general prayer, to which he may be entitled upon the facts plainly stated in the bill. There is no reason for denying his right to relief, if

> the plaintiff is otherwise entitled to it, simply because it is asked under the prayer for general relief, and upon a somewhat different theory from that which is advanced under one of the special prayers."

These authorities would seem to unquestionably establish the sufficiency of the prayers for relief in the bill, and to effectively dispose of the eighth ground of objection laid in the amended demurrer.

The grounds of objection to the bill alleged in the original demurrer have not been noticed, for the reason that they are all merged in or covered by the amended demurrer.

Upon the whole case presented, it is respectfully submitted that the demurrers should be overruled, and the defendant required to answer the plaintiff's bill.

MARCH, 1907.

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